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CONTENTS.

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Something of an impetus has been given to the movement in behalf of uniformity in State legislation by its agitation and discussion at the recent meeting of the American Bar Association. The paper upon that subject there read by Mr. William L. Snyder, who is a member of the New York commission for the promotion of uniform legislation in the United States, interestingly presents the merits of the proposed system of interstate uniformity, and suggests the form of a "uniform statute," by which the object aimed at may be attained. The initial step in the movement was taken by the State of New York in the passage by its legislature, in 1890, of an act providing for the appointment of commissioners for the promotion of uniformity of legislation in the United States. Since that time similar commissions have been appointed by the States of Pennsylvania, Delaware, Massachusetts, New Jersey and Michigan, and without doubt other States will soon take similar action. Many of the States have incorporated in their laws provisions intended to secure uniformity, and others have been unconsciously endeavoring to assimilate their laws so as to conform to those of other States, and thus within narrow limits the work of uniformity has been progressing. This is true especially in many of the new States. What is now needed is to set before the minds of legislators in all the States the attainment of uniformity as an object to be directly pursued.

From the paper read by Mr. Snyder we learn that in at least seven States the law as to the execution of deeds or written instruments affecting land has been made practically uniform. These States are Ohio, Illinois, Kansas, Louisiana, Nebraska, Oregon and Wisconsin. The rule adopted is that a deed, mortgage, or power of attorney, or other instrument affecting lands within the State, executed without the State, if acknowledged or proved in conformity with the law of the State or country where executed, shall be deemed to be validly executed as if made within the State and in conformity with its laws. The uniformity here has been attained without altering the laws of the respective States. It is suggested that uniformity might be arrived at by the adoption of a uniform law prescribing a form of acknowledgment and leaving it optional to use the form at present existing in any State or the form prescribed by the uniform statute. In this way, it is urged, a uniform mode of acknowledgment would be provided which would in time commend itself everywhere because it could be used everywhere and its use would in time become universal.

It seems that the assimilation of the law with respect to wills is found in a larger number of States than that of the provisions with respect to deeds and conveyances. In at least twenty-one States a will made out of a State which is valid according to the laws of the State or country where made is given the same effect as if executed according to the laws of the State. The States in which this rule prevails are Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, North Dakota, South Dakota, Pennsylvania, Tennessee, Virginia, Ohio, Wisconsin and Wyoming. As regards descent and distribution it is assumed that the common law prevails throughout the United States. As regards the subject of marriage, divorce and legitimacy the law is in a state of great confusion. Something has been done to establish uniformity by the courts, but the limits within which they can act are necessarily circumscribed. The demand for greater uniformity in these branches of the law is growing in earnestness.

Mr. Snyder submitted with his paper a draft of a uniform statute intended to secure approximate uniformity in legislation upon the subjects heretofore referred to. From this, however, he has omitted any provision relating to commercial law, for the reason that, in his opinion, the only mode in which to secure uniformity on matters of commercial law is for the States of the Union to follow the example of every commercial nation in the world and adopt an interstate commercial code. Upon this subject he says by way of conclusion:

No matter what may be said for or against codifica-

tion; no matter what fine-spun theories may be urged to discourage the use of written codes; no matter what plausible arguments may be brought to bear to show that the substantive law can never be embraced within a written code; nevertheless the universal judgment of the commercial world has emphasized their necessity, and written codes have been adopted in about every civilized country on the globe. England has gone farther in the practical use of codes than perhaps any other country. Her Anglo-Indian code is a marvel in this regard, covering not only the substantive law, but the law of procedure as well. The merchants of London, driven to desperation by the conflict, uncertainty and inaccessibility of judicial decisions and fragmentary legislation, wrote the famous "Factors Act," which was enacted by Parliament at their urgent solicitation. This statute renders the merchant reasonably familiar with the law governing the rights and liabilities of shippers and consignees. France, notwithstanding its comprehensiv compendium of the law so admirably stated in the Code Napoleon, has completed its codification by adopting the commercial code. Holland, Spain, Italy, Germany, Austria, Belgium, Mexico, indeed every civilized nation, has codified the law relating to commercial transactions more or less elaborately.

Within the United States it is safe to say that the great majority of the States have codified the law of procedure, and a number have also codified the substantive law. All that remains is to make these codes, at least so far as commercial transactions are concerned, reasonably uniform. Could not the States agree to assimilate the law of commercial paper, usury, partnership and agency, in short, the law of contracts? This work, when completed, would constitute a commercial code which might be adopted in the several States. The growth and development of the United States imperatively demands that legislation shall keep pace with the advancement and increasing wealth of the States. Our interstate relations are becoming, commercially, constantly more intimate and lucrative. An interstate code, governing the law of commercial transaction, is needed, and will impart a new interest, and must of necessity confer lasting benefits. The usefulness of such a code, doubtless, all are willing to admit. Let us take up the work with enthusiasm and round out the achievements of the century with the adoption of an interstate commercial code.

NOTES OF RECENT DECISIONS.

DURESS—PAYMENT BY DEBTOR IN FAILING CIRCUMSTANCES.—The Supreme Court of Utah, in Flack v. The National Bank of Commerce, hold that where a debtor in failing circumstances pays a note not yet due to a bank out of funds on deposit therein, under threat of attachment proceedings if the note is not paid, such promise is voluntary and not made under duress. Anderson, J., after commenting upon the evidence, says:

In Forbes v. Appleton, 5 Cush. 117, a payment of money was made in order to prevent the obligee in a bottomry bond from attempting to enforce the same by taking possession of the vessel, and the court held that it was not a compulsory, but a voluntary, payment; and if, the money was not due, the debtor had no right of action to recover it back, although he declared at the time of payment that he made it under coercion, and intended to reclaim the same by action. The court said that "the principle of law is a very familiar and a very salutary one that, where a person, with a full knowledge of all the circumstances, pays money voluntarily under a claim of right, he shall not afterwards recover back the money so paid. . . . In general, the cases that have been treated as exceptions are cases where the possession of the property upon which the lien is claimed was already in the party demanding the money, or cases in which the party had no other means to save himself from imprisonment, or his property from sale, or execution or warrant of distress, but by the money demanded." The court of appeals of Maryland, in an elaborate opinion, considers "the doctrine as established that a payment is not to be regarded as compulsory, unless made to emancipate the person or property from an actual and existing duress, imposed upon it by the party to whom the money is paid." Mayor, etc., v. Lefferman, 4 Gill, 425. See, also, Buford v. Lonergan (Utah), 22 Pac. Rep. 164. In Clark v. Dutcher, 9 Cow. 674, it was held, upon a full examination of the English authorities, that where money is paid with full knowledge of all the facts and circumstances upon which it is demanded, or with means of such knowledge, it cannot be recovered back upon the ground that the party supposed he was bound in law to pay it, when in truth he was not. See, also, Mayor, etc., v. Lefferman, 4 Gill, 425; Brumagim v. Tillinghast, 18 Cal. 265; Mays v. Cincinnati, 1 Ohio St. 269; Forbes v. Appleton, 5 Cush. 117; Dunham v. Griswold, 100 N. Y. 224, 3 N. E. Rep. 76; Glass Co. v. City of Boston, 4 Metc. (Mass.) 189. It is true this is not a direct action to recover back money claimed to have been paid under duress, but it is an action for damages against the defendant for not paying a check drawn by plaintiffs out of funds which plaintiffs had authorized defendant to use in payment of its note, but which authority they claim to have given under duress, and which should therefore be treated as having never been given; so that the foundation of the action is the alleged duress, and plaintiffs' right to maintain it depends entirely upon the question as to whether the payment of the note was voluntary or under coercion. If the payment of the note was made under duress, and might have been recovered back by a direct action for that purpose, then it should be treated as not having been made at all, and the money should be treated as still on deposit in the defendant's bank. Ordinarily it is the duty of a bank to honor the checks of a depositor to the extent of his deposits, and for a refusal to do so an action may be maintained against the bank for any damage the customer may sustain by reason of such refusal. Marzetti v. Williams, 1 Barn. & Adol. 415; Rolin v. Steward, 14 C. B. 595; 1 Suth. Dam. 129. It will thus be seen that plaintiffs' right to maintain this action depends wholly on the question as to whether or not the plaintiffs' direction to defendant to appropriate their deposit to pay the note was made voluntarily or under duress, within the meaning of the law.

The court instructed the jury that if the plaintiffs authorized the defendant to apply the money deposited with it to the payment of the note, and that they did so because of the demand of the defendant for payment or security, and the threat of attachment proceedings in case payment should not be made or security given, then such payment was made under duress, and was as if no payment had been

made at all, and that defendant's appropriation of plaintiffs' money in payment of the note was without any valid authority, and that the money was to be treated as still on deposit for plaintiffs' use and benfit, and that defendant would be liable to plaintiffs for its refusal to pay the check when presented for payment. We think the court erred in this instruction. Where a party is indebted to a bank on an unsecured note not yet due, and is in embarrassed or failing circumstances, and his property is liable to be attached and the bank garnished by his creditors, and the bank threatens to begin attachment proceedings against him in order to save itself from loss unless he secures the note, which he refuses to do, but instead thereof authorizes the bank to appropriate sufficient of his deposit in the bank to pay his note, such payment is not a payment under duress; and cannot be recovered back by action; nor can such payment be treated as not having been made, and the bank held liable in damages for not honoring a check drawn against the funds thus appropriated.

INTERSTATE EXTRADITION OR RENDITION.

1. Rule of the Federal Government.
(*a*) Shall be Tried Only for the Crime Specified.
2. The Doctrine of the States.
(*a*) May be Tried for Another Offense.
(*b*) Cannot be Tried for Another Offense.
3. Kidnapping.

1. *Rule of the Federal Government.*—The Supreme Court of the United States holds that, apart from the provisions of treaties on the subject, there exists no well-defined obligation on one independent nation to deliver to another fugitives from its justice; and though such delivery has often been made, it was upon the principle of comity. The right to demand it has not been recognized as among the duties of one government to another which rest upon established principles of international law.[1] But this doctrine needs qualification when not confined to the United States and Great Britain. Because it is held by distinguished publicists that it is the duty of every State to surrender a fugitive from justice who has come into its territory; that each State should deny an asylum to criminals after due demand for them by the extraditing nation. These publicists argue that it comports with the rights and duties of nations and the plainest principles of justice, that all States should surrender, on proper demand, fugitives from justice. According to the law and usage of most nations, every sovereign State is obliged to refuse an asylum to all persons accused of crimes affecting the good order of society, and whose extradition is demanded by the power of that country within whose jurisdiction the crime was committed.[2] Dr. Heinrich Lammasch, a German publicist, says[3] that in cases of heinous offenses it is the imperative duty of nations to surrender fugitives from justice to the rightful State on proper demand. But he believes that up to the nineteenth century the actual usage of nations was to deny the right of a State to have a fugitive surrendered except as provided by treaty. He now says it is an imperative duty which the State owes to itself, and that "the same considerations which impel a State to punish criminals of this sort in general, impel it to prevent an immunity from a penalty when the fugitive has committed a crime in a foreign jurisdiction. If a fugitive from justice is permitted to take up his abode among us unpunished, perhaps to boast of his crime and to enjoy the spoils in perfect security, it would militate against or seriously disturb the feelings of legal security among the law-abiding citizens, and at the same time it would in a perilous manner develop the criminal disposition of the vicious. The knowledge of the presence of such fugitives from justice, against whom the State openly asserts its inability to punish, would inculcate ideas which must debase the consciousness of legal security among citizens of the States harboring criminals." So, Bernard, in his treatise on Extradition (Paris, 1883), seems to be greatly wrought up against the doctrine adopted by the United States and England, and advises that all European powers shall not ask for extradition from England and the United States, and thereby make these two nationalities "the chosen asylum of the worst malefactors"—*asile prefere des pire malfaiteurs*. Justice Miller's argument is not in accord with the statement of Dr. Heinrich Lammasch. Justice Miller says: "It is only in modern times that the nations of the earth have imposed upon themselves the obligation of delivering up these fugitives from justice to the States where their crimes were committed for trial and punishment. This has been done generally by treaties made by

[1] United States v. Rauscher, 119 U. S. 407. See, also, *Ex parte* McCabe, 46 Fed. Rep. 363.

[2] Grotius, b. 2, ch. 21, §§ 3, 4, 5; Heineccius, II, pt. 4 ch. 3, §§ 23-29; Rutherford, b. 2, ch. 9, II, 496; Vattel, b. 2, ch. 6, §§ 76, 77.

[3] Auslieferungsplicht und Asylrecht (Leipzig 1887), pt. 1.

one independent government with another. Prior to these treaties, and apart from them, it may be stated as the general result of the writers upon international law, that there was no well-defined obligation on one country to deliver up such fugitive to another, and though such delivery was often made, it was upon the principle of comity, and within the discretion of the government whose action was invoked: and it has never been recognized as among those obligations of one government towards another which rest upon established principles of international law."[4]

(*a*) *Shall be Tried Only for the Crime Specified.*—A treaty to which the United States is a party is a law of the land of which all courts, State and national, are to take judicial notice, and by the provisions of which they are to be governed, so far as they are capable of judicial enforcement. And an extradited criminal cannot be tried for any other offense than that charged in the extradition proceedings.[5] The extradited prisoner shall be tried only for the offense with which he is charged in the extradition proceedings, and for which he was delivered up, and if not tried for that, or after trial and acquittal, he shall have a reasonable time to leave the country before he is arrested upon the charge of any other crime committed previous to his extradition.[6]

2. *The Doctrine of the States.*—The constitution of the United States declares: "A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."[7] The act of congress provides that a copy of an affidavit made before a magistrate of the State from whence the person so charged has fled, properly certified, shall be sufficient to authorize such demand, arrest and delivery.[8] This act is silent as to any delay in arresting the prisoner upon any different charge after he has been acquitted, or after he has served his punishment for the offense for which he was extradited. It contains no provisions securing to the fugitive any right to return. And the clause in the federal constitution was never intended for the benefit of the fugitive, nor to enable him to escape just punishment for his offense; it was to secure the apprehension of a criminal who should escape the jurisdiction wherein he had committed the offense. It is settled that the words "treason, felony or other crime," as used in the United States constitution, embrace every act forbidden and made punishable by a law of the State. The word "crime" of itself includes every offense from the highest to the lowest in the grade of offenses, and includes what are called misdemeanors, as well as treason and felony.[9] The rule accepted by the States is not based upon treaty stipulations, because there are no such stipulations, so that the principles applying to foreign extradition are not applicable to interstate prisoners. Extradition is not confined to specific crimes, but to all crimes, for the States are commanded to surrender for all crimes.

(*a*) *May be Tried for Another Offense.*—One line of State decisions holds that a person extradited from one State to another for a certain offense, after being tried, acquitted and discharged, may be arrested and tried for another offense before he is allowed to return to the State from which he was brought.[10] So, a fugitive from justice extradited under the constitution and laws of the United States, on the charge of the commission of a specific crime, and discharged therefrom, can be held by the courts of the State to which he is surrendered, for another and entirely different crime.[11] As the fugitive may be demanded for any crime, and as the surrendering State has no power to inquire into his probable guilt, or whether the crime for which he is demanded is made such by its laws, it follows that when surrendered he may be tried for

[4] United States v. Rauscher, 119 U. S. 407, 413.

[5] U. S. Rev. St. § 5275; Act of Congress, March 3, 1869, ch. 141, § 1; 10 Am. L. Rev. 617.

[6] United States v. Rauscher, 119 U. S. 407, 424.

[7] U. S. Const. Art. IV, § 2.

[8] U. S. Rev. St. § 5278.

[9] People v. Donahue, 84 N. Y. 438; Morton v. Skinner, 48 Ind. 123; *In re* Voorhees, 32 N. J. L. 141; *In re* Hooper, 52 Wis. 701, 702.

[10] State v. Stewart, 60 Wis. 587; Adriance v. Lagrave, 59 N. Y. 110; United States v. Caldwell, 8 Blatchf. 131; United States v. Lawrence, 13 Blatch. 295.

[11] *In re* Noyes, 17 Alb. L. J. 407; *In re* Miles, 52 Vt. 609; Ham v. State, 4 Tex. App. 645; Williams v. Bacon, 10 Wend. (N. Y.) 636; Browning v. Abrams, 51 How. Pr. (N. Y.) 172; Dows' Case, 18 Pa. St. 37; United States v. Watts, 14 Fed. Rep. 138, 139; People v. Sennot, 20 Alb. L. J. 230; Hackney v. Welsh, 107 Ind. 253.

any crime he may have committed. But that fact lends no countenance whatever to a similar claim on the part of the receiving power under an extradition treaty with a foreign nation.[12] In case of foreign extradition, the demand is limited to special crimes. Political crimes and some other offenses are not extraditable with foreign nations, and hence it is important that the prisoner be tried for the crime for which he was brought within the jurisdiction of another nation—the crime on account of which the foreign nation consents to surrender him to the demanding nation. So, in cases of fugitives from a foreign country, delivered under the provisions of a treaty to another sovereign, it is proper that the prisoner should only be held for the offense on account of which the foreign country surrendered him to the demanding nation, because, in effect, such procedure is according to contract under which the criminal was delivered; but no such reason exists why a fugitive from justice from one State, arrested in another, and extradited to the former State, should not be tried for another offense than the one for which he was arrested. The clause of the constitution contains no provision, express or implied, that an interstate fugitive shall not be tried for an offense other than the one for which he was delivered up under the interstate proceedings. And it would seem that there is no good reason why the fugitive, being extradited, should not be held and tried for any and every offense he may have committed in the jurisdiction of the demanding State.[13] However, there is some conflict in the authorities as to whether a person who is brought from one State to another to answer a particular charge can be tried on any other charge than that upon which he was extradited.[14] So, under the rule that a prisoner may be tried for any crime which he has committed, if one commits a felony in a State, and voluntarily goes into another State and is arrested for a felony committed in the latter State, and while in custody a warrant for his arrest, issued as a requisition from the former State, is received by the officer detaining him, but the accused, escaping from custody, flees into a third State, from which he is returned to the officer upon requisition, he may, upon failure of the prosecution against him, be surrendered to the authorities of the original State upon the requisition.[15]

(*b*) *Cannot be Tried for Another Offense.*—The decisions of the different State courts do not agree, and many hold that an extradited prisoner can only be tried for the crime specified in the proceeding. It is said that a court cannot have jurisdiction beyond the limits of its own State, which proposition is indisputable; nor can it send its process into other States or countries. Neither can it compel a fugitive from justice, or any other person beyond the boundaries of its own State, to attend its sessions. A fugitive from justice can be obtained from another State or country only with the consent of the executive authorities of such other State or country. Hence, it is said, for a State to procure a fugitive from justice from some other State or country to be tried for some particular offense, by the consent of such other State or country, and then to try him for another and a different offense before he has had opportunity to return, would be such an unwarranted abuse of judicial process, such a fraud upon justice, such an act of perfidy, that no court in any country should for a moment tolerate the same.[16] It is claimed that in case the extradition is with a foreign country under a treaty, that the treaty has no provision that the fugitive from justice shall be tried only for the offense for which he was extradited and, hence, the decisions of the United States courts are applicable to interstate extradition.[17] Judge Daniels uses the following language: "In principle there can be no practical difference between the case of a fugitive brought from a neighboring State under the constitution and laws of the United States, and one brought from a foreign country under the provisions of its treaties. In each the right of freedom to return is pre-

[12] United States v. Watts, 14 Fed. Rep. 130, 139.

[13] State v. Stewart, 60 Wis. 587, 50 Am. Rep. 388, 19 N. W. Rep. 429.

[14] See 14 Alb. L. J. 96, 11 Crim. L. Mag. 157, Princeton Review, January, 1879, North Am. Rev. May, 1883; Church on Habeas Corpus, § 462, 20 Alb. L. J. 425, 12 Chicago Legal News, 115; Spear on Extradition, 558.

[15] Hackney v. Welsh, 107 Ind. 253.

[16] State v. Hall, 40 Kan. 338, 341. See, also, United States v. Watts, 8 Saw. 370; *Ex parte* Hibbs, 26 Fed. Rep. 421, 431; *Ex parte* Coy, 32 Fed. Rep. 911 and note; Commonwealth v. Hawes, 13 Bush (Ky.), 697; State v. Vanderpool, 39 Ohio St. 273, 48 Am. Rep. 431; Blandford v. State, 10 Tex. App. 627.

[17] State v. Simmons, 39 Kan. 262; *In re* Cannon, 47 Mich. 481; State v. Hall, 40 Kan. 338.

cisely the same, and the implied guarantee of that right under the laws is no greater in one case than it is in the other."[18] Justice Valentine says that, as between sister States, there is more reason for applying the doctrine that an extradited fugitive can be prosecuted only for the offense for which he was extradited, than there is between a State and a foreign country, for the reason that the State from which the fugitive was extradited has no effective remedy, while a foreign country can protect itself by having a provision inserted in its treaties with other countries preventing the extradited fugitive from being prosecuted for anything except the offense for which he was extradited, or by withdrawing all intercourse between itself and the other country. On the other hand, sister States cannot make treaties, nor can they avoid intercourse. "It is the constitutional duty of a sister State in every case to extradite a fugitive from justice upon a legal requisition from another sister State, and cannot ask any questions upon the subject nor impose any terms."[19] Judge Cooley says: "To obtain the surrender of a man on one charge and then put him upon trial on another, is a gross abuse of the constitutional compact. We believe it to be a violation, also, of legal principles. It is a general rule, that when, by compulsion of law, a man is brought within the jurisdiction for one purpose, his presence shall not be taken advantage of to subject him to legal demands or legal restraints for another purpose. The legal privileges from arrest when one is in the performance of a legal duty away from his home rest upon this rule, and they are merely the expression of reasonable exemption from unfair advantages. The reason of the rule applies to these cases; and it should be held, as it recently has been in Kentucky, that the fugitive surrendered on one charge is exempt from prosecution on any other. He is in the State by compulsion of law upon a single accusation. He has a right to have that disposed of and to depart in peace."[20] So, Chief Justice Williams holds that a person surrendered to the authorities of Ohio by another State or territory on extradition proceedings cannot, while held in custody thereunder, be lawfully tried for a different crime than the one upon which his extradition was obtained, unless he voluntarily waives his privilege.[21] It is held in the Ohio case just cited, that neither the constitution nor the federal statute contains any express guaranty that the person surrendered shall not be tried for any crime except the one upon which he was surrendered, nor that he shall be returned when discharged from custody on that charge. Neither does the treaty with any other nation contain such guaranty. The treaty, like the constitutional and the statutory provisions, is silent on the subject. And its provisions are no more susceptible of a construction that will raise such guaranty by implication than are those of the federal constitution and laws. The extent of the contention of those who assert the right of the demanding country to try the person extradited under the treaty for an offense different from the one on which the extradition was procured is that, because there is no express limitation in the treaty restricting the right of the country in which the offense was committed to the trial of the offender for the crime specified in the warrant of extradition, he may, therefore, be tried for any violation of its criminal laws. This view, however, is at variance with the decision of the United States Supreme Court, which does not recognize the existence of an executive pledge of return of the extradited person, nor is any contained in the treaty or law. Hence, there is no foundation for any distinction, on the ground of guaranty or pledge of return, between an extradition under a treaty and one between the States, with respect to the right of those extradited to exemption from trial for any other crime than that upon which the rendition was obtained. Nor is there any distinction upon any other ground. Both the constitution and the act of congress contemplate that the demand made by one State upon another shall be for the extradition of the accused person to answer the specific crime charged, and that his surrender shall be for that purpose. A treaty is no more definite in its requirement that the extradition thereunder shall be for a specific crime therein named. And hence, the rules adopted under a treaty should be applied to interstate ex-

Lagrave's Case, 14 Abb. Pr. N. S. (N. Y.) 344, 346. Compare Post v. Cross (N. Y. Sup. Ct.), 24 Chicago Legal News, 380.

[19] State v. Hall, 40 Kan. 338, 345.

[20] Princeton Review, January, 1879, p. 176.

[21] *Ex parte* McKnight (Ohio), 28 N. E. Rep. 1034.

tradition.[22] It will be seen that there is a conflict of authority upon the general question whether, in a case of interstate extradition, the extradited person can lawfully be tried for any offense other than the one upon which he was surrendered, until he shall have had a reasonable time and opportunity to return to the surrendering State after his trial and acquittal on the charge upon which he was extradited, or the expiration of his imprisonment under a conviction thereof. The weight of authority, as applied to interstate extradition, is that the prisoner may be tried for other offenses than the one specified in the extradition proceedings.

3. *Kidnapping.*—There is a class of cases which strongly support the doctrine of the cases which hold that a person brought into a State to answer a particular charge may be tried upon another. These cases hold that no matter how the criminal comes within the jurisdiction of the State, he may be arrested and tried.[23] No mode is provided by the constitution and laws of the United States by which a person, unlawfully abducted from one State to another, and held in the latter State upon process of law for an offense against the State, can be restored to the State from which he was abducted.[24] Such forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offense, and presents no valid objections to his trial in such court.[25] And there is no comity between the States by which a person held upon an indictment for a criminal offense in one State can be turned over to the authorities of another State, although abducted from the latter.[26] The trespass of a kidnapper is not provided for by treaty. The party kidnapped has his remedy against the kidnapper, or the government whose laws he has transgressed may proceed to demand reparation from him. How far such forcible transfer of the fugitive, so as to bring him within the jurisdiction of the State where the offense was committed, may be set up against the right to try the prisoner is for the State court to decide, and presents no question for the United States Supreme Court to investigate.[27] The fact that the fugitive was kidnapped and returned to the country where he committed the offense, does not deprive the courts of the State to which he has been returned of jurisdiction to try him for any offense charged against him, the State not being a party to such kidnapping procedure. Under the common law, the court trying a party for crime committed within its jurisdiction, will not investigate the manner of capture in a foreign country, though he may have been illegally captured. But this rule has no application where the fugitive has been returned on a warrant of extradition in conformity with the terms of a treaty. In such case, he can be proceeded against only for the crime specified in the warrant of extradition.[28]

D. H. PINGREY.

[22] *Ex parte* McKnight (Ohio), 28 N. E. Rep. 1034; State v. Vanderpool, 39 Ohio St. 273.

[23] State v. Wenzel, 77 Ind. 428; *Ex parte* Kraus, 1 B. & C. 258; *Ex parte* Scott, 9 B. & C. 446; Ker v. People, 110 Ill. 627, 51 Am. Rep. 706; Ham v. State, 4 Tex. App. 645; Dows' Case, 18 Pa. St. 37.

[24] Mahon v. Justice, 127 U. S. 700.

[25] *Ex parte* Scott, 9 B. & C. 446; Lopez' Case, 1 Dearsly & Bell's Cr. Cas. 525; State v. Smith, 1 Bailey S. Car. L. 283, 19 Am. Dec. 679; State v. Brewster, 7 Vt. 118; Dows' Case, 18 Pa. St. 37; State v. Ross, 21 Iowa, 467; The Richmond, 9 Cranch (U. S.), 102; Ker v. Illinois, 119 U. S. 436; *In re* Miles, 52 Vt. 609.

[26] Mahon v. Justice, 127 U. S. 700. See, also, *In re* Brown, 8 Crim. L. Mag. 313.

[27] Ker v. Illinois, 119 U. S. 436, 9 Crim. L. Mag. 201.

[28] Ker v. Illinois, 110 Ill. 627. Lately two anarchists were kidnapped in a New Jersey city and transferred to Pennsylvania without extradition papers, charged with conspiring to kill the manager of the Carnegie Steel Works at Homestead, Pa. The State of New Jersey has already taken steps to punish the abductors, but the courts of Pennsylvania will not investigate the manner of the anarchists coming into their State.

ELECTIONS—AUSTRALIAN BALLOT LAW.

BOWERS V. SMITH.

Supreme Court of Missouri, June 20, 1892.

1. Under the Missouri Ballot Act of 1889 (Rev. Stat. 1889, §§ 4756-4794) an error of the county clerk, in printing names of additional candidates on the official ballots will not nullify the election at which those ballots are used, where no objection to them is made (as provided by that law) before the election.

2. Where the votes in a certain election district were received at two polling places instead of at one, that irregularity will not vitiate the returns, where no prejudice or disadvantage to the defeated candidate appears to have resulted.

3. Where the legislature declares a certain irregularity in election procedure as fatal to the validity of the returns the courts will effectuate that command, otherwise they will ignore such innocent irregularities of election officers as are free of fraud and have not interfered with a fair expression of the voter's will.

4. An allegation in a statutory election contest, that a list of names of party candidates was "illegally certified," without alleging how it was certified, or in what respects it was defective, is merely the statement of a legal conclusion and not of a fact.

5. Such a construction of an election law as would permit the disfranchisement of large bodies of voters because of an error of a single official should not be adopted where the language in question is fairly susceptible of any other.

6. Where a statute is adopted from another State its construction there is not likewise adopted, if inconsistent with the constitution of the State in which it is transplanted.

7. Under the Missouri ballot law of 1889, electors may vote for candidates whose names do not appear upon the official printed ballots, by adding their names upon the ballots in the proper places.

BARCLAY, J.: This appeal was first heard in Division 1, and a conclusion announced November 9, 1891, as reported in 17 Southwestern Reporter, 761. After a motion for rehearing was denied, plaintiff moved to transfer the cause to the court in *banc*. The motion was ultimately sustained, upon the entry of a dissent by one of the judges to the decision of the First Division. The case was then fully re-argued before the whole court.

It is a statutory contest to determine the respective rights of the parties to the office of sheriff of Pettis county. The election in question took place November 4, 1890. Mr. Bowers is the contestant. For convenience he will be called the plaintiff, and his opponent, Mr. Smith, who is the contestee, the defendant. Plaintiff's notice of contest assigned several distinct grounds, in as many paragraphs, in the nature of counts or causes of action. After it was served defendant gave plaintiff a counter notice, which (besides denying generally the plaintiff's charges) alleged a number of objections to the original count of the ballots, and claimed that corrections, to defendant's advantage, should be made therein in a number of particulars. The circuit court of Pettis county sustained motions to strike out some parts of plaintiff's notice. Exceptions were saved to that ruling. The case then came to trial. As will appear, the real issues were fully resolved into questions of law, and upon them the trial court found for the defendant. Plaintiff then appealed after the usual motions. After the formal contest began, plaintiff applied for and obtained a recount, by the county clerk, of the original ballots cast at all the precincts in the county. The recount was conducted as provided by the statute on that subject. Rev. Stat. 1889, §§ 4721-4726. It resulted in an exhibit that defendant had a plurality over the plaintiff of thirty-three votes in the county, and that no less than three thousand voters had cast their ballots in the city of Sedalia at that election.

Both parties rely on the recent statute concerning elections (§§ 4756-4794, Rev. Stat. 1889), commonly known as the "Australian Ballot Law," as first enacted in this State. It is thus conceded to apply to Sedalia as a city of over five thousand population. The points of difference to be determined relate to features of the election in that city, held under that law. We need not pause to state the particulars of the rulings in the trial court, raising the material questions involved, but shall proceed at once to the merits of the dispute. Plaintiff's contention is that the entire returns from Sedalia should be thrown out of the final count for several reasons.

1. He claims that the official ballots, printed by the county clerk for use at the voting places in that city, contained among others the names of the nominees of the Union Labor party, and that that political party had not polled three per cent. of the entire vote at the last previous general election, as required by section 4760 of the Revised Statutes of 1889. Conceding (without investigating) the fact on which that claim rests, does it follow that the vote of the precinct should be discarded? In interpreting the statute in question, it must be remembered that its adoption here brings it into subordination to the fundamental law of Missouri, and that prior decisions elsewhere, construing enactments on the same general topic, cannot properly be followed if inconsistent with that fundamental law. By our constitution general elections are held at certain fixed dates, and the right of suffrage is expressly secured to every citizen possessing the requisite qualifications. The new ballot law cannot properly be construed to abridge the right of voters to name their public servants at such elections, or to limit the range of choice (for constitutional offices) to persons nominated in the modes prescribed by it. Nominations under it entitle the nominees to places upon the official ballots, printed at public expense; but the Missouri voter is still at liberty to write on his ballot other names than those which may be printed there. The statute recognizes this right by requiring sufficient blank space for such writing, next to the printed names of candidates for each office. Rev. Stat. 1889, § 4773. In this respect our law differs materially from the English act of 1872, under which no actual poll of voters is held, unless more candidates are formally nominated than there are vacancies to be filled.

These observations seem necessary to guard against the supposed effect of adjudications in other States or countries, construing features of such laws differing from those in force in this State. The living question which this case presents is, what construction shall be given to the Missouri statute on this subject, and to what extent the constitutional rights of voters depend upon the correctness of action of the county clerk in preparing and printing the official ballots. In the case at bar the act of the clerk which is called in question consisted of admitting names to the ballot, not of excluding any. There is a substantial difference, in principle and in effect, between admitting and excluding such names. The practical consequence of erroneously adding a name

to the ticket is merely to enlarge the voter's range of choice among candidates on the official list. In Missouri any voter may add such a name for himself in the blank provided on the ballot for that purpose.

How then are errors of this sort to be treated? Plaintiff insists that they vitiate the whole return; that every such error of judgment is a sufficient ground to disfranchise the voters of the locality where such ballots are used. The law in question presents a number of points at which errors may be expected of the most faithful and conscientious officers. It will often require nice judgment to determine (among other things) whether party candidates have been regularly nominated; how declinations should be treated; whether certificates of independent nominations have the necessary signatures; whether the signers are "resident electors;" whether nomination certificates are formally sufficient under the law, or whether acknowledgments thereof have been "executed with the formalities prescribed for the execution of an instrument affecting real estate." Rev. Stat. 1889, §§ 4756-4763. It is declared to be the duty of the county clerk to provide the ballots, and that all others than those printed by him according to the provisions of this law "shall not be cast or counted in any election." The plain meaning and purpose of this expression can be seen from the context in the section in which it occurs and that which next follows. §§ 4772, 4773 of 1889. The design is to preclude the voter and his party friends from supplying his own ballot (as was the former practice), and to compel him to use only that furnished by the State through the county clerk. The latter is directed to print no other names on the voting papers than those of the candidates nominated according to the provisions of that law. The title of the original act (Sess. Acts. 1889, p. 105) and its opening lines plainly show that uniformity in the printing and appearance of the ballots is one of the main objects aimed at. The prohibitions above noted are inserted to further that object, but they give no countenance to the notion, advanced by the plaintiff, that their purpose or effect is to nullify the result of every election at which the county clerk may make some error in publishing or printing the names on the only ballots that can be used. Legislative language should be clear and unequivocal to justify an inference that such consequences were intended to flow from it. Ruth Inst. (2d Am. ed.), p. 413. The printing of the ballots "according to the provisions of this" law, and the antecedent making up of a ticket to be printed (by acting on the nominations submitted) are two distinct official duties. The county clerk prints all the ballots. But he does not act originally on all the nomination papers. Some of the latter are submitted to the secretary of State, and he certifies certain nominees to the county clerk. Rev. Stat. 1889, §4767.

Errors in omitting or adding names to the list of candidates, by rulings on the nominating documents, are distinguished from errors made in the mere printing of ballots, by the terms of the law itself, which in section 4778 provides a summary remedy to correct any "error or omission in the publication of the names or description of the candidates nominated for office, or in the printing of the ballots." So that the language of section 4772, forbidding other ballots than "those printed by the respective clerks of the county courts, according to the provisions of this article," to be cast or counted, obviously carries no such meaning as to nullify ballots, printed by county clerks as directed by the law, and cast by voters in conformity thereto, but incorrectly made up beforehand by the secretary of State or the county clerk by erroneously admitting some candidate's name to a place on the ballot. The suffrage is regarded with jealous solicitude by a free people, and should be so viewed by those intrusted with the mighty power of guarding and vindicating their sovereign rights. Such a construction of law as would permit the disfranchisement of large bodies of voters, because of an error of a single official, should never be adopted where the language in question is fairly susceptible of any other. Wells v. Stanforth (1885), 16 Q. B. Div. 245. Or as a very able judge once tersely said: "All statutes tending to limit the citizen in his exercise of this right" of suffrage "should be liberally construed in his favor." Owens v. State (1885), 64 Tex. 509.

It is proper, and often necessary, to consider the effect and consequences of a proposed interpretation of a law to ascertain what is probably its true intent. State v. Hope (1889), 100 Mo. 361. The consequences which would inevitably follow the acceptance of the reading proposed by the plaintiff are so far-reaching and disastrous that they constitute a vigorous argument against adopting it. More than that, section 4778 clearly discloses a legislative design to provide for the correction of just such errors as we are considering, at the instance of any elector (including every one interested), before the election. The process provided is so summary that the inference is irresistible that the errors it is designed to reach should be rectified by prompt action then, so as not to subject voters to the risk of losing their votes by reason of those errors.

"Sec. 4779. Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names or description of candidates nominated for office, or in the printing of the ballots, the circuit court of any county, or the judge thereof in vacation, or if the circuit judge is absent from the country, a judge of the county court, may, upon application by any elector, by order, require the clerk of the county court to correct such error, or to show cause why such error should not be corrected." In connection with this section it should be remembered that "at least seven days before an election" the county clerk is required to cause the list of nominations, "arranged in the

order and form in which they will be printed upon the ballot," to be published in the newspapers as provided in sections 4768, 4769. Thus every one in interest is apprised of the names of all candidates, as determined by the clerk, at least one week before election day, to the end that steps may be taken, if desired (as indicated by the language quoted), to supply any omissions or to correct other errors in that list as published. If full effect be given to that section, the injustice and unfairness which otherwise would result in the practical working of the statute would be avoided.

This "ballot reform law" was intended to improve the methods for giving expression to the popular will in the choice of public officers. It should be construed so as to promote, not destroy, the great objects in view in its passage. It resembles and in the main follows statutes elsewhere on the same subject, but is not identical with its models at all points. A glance at these models however will show how foreign to the reason and spirit of such legislation is the idea that the unwary voter is to be subjected, in the name of "reform," to the risk of losing the right of suffrage every time an error in admitting a name to the official ballot is made by an officer passing upon the regularity of nominating papers, when no objection to his ruling is made before the election. Section 4778 was evidently framed with the view to avert such risk. It coincides with part of section 19 of the New York law of 1890. It is not found in the English statute, but there we read that "the returning officer shall decide on the validity of every objection made to a nomination paper, and his decision, if disallowing the objection, shall be final, but if allowing the same, shall be subject to reversal on petition questioning the election or return." 35 & 36 Vict. (1872), p. 214, chap. 33, Sched. 1, § 13. This provision applied at first to parliamentary elections only, but after the decision in Northcote v. Hulsford (May 8, 1875), L. R., 10 C. P. 476, it was extended to municipal elections (the kind considered in that case) by the amendment of July 19, 1875. 38 & 39 Vict., chap. 40, § 1, p. 281. So that, in England and New York to-day, the erroneous addition of a name to the official list of nominees though not corrected before the election, is harmless in its effect upon the voters' right to use the official ballot without fear of possible disfranchisement. This, we consider, is also the proper meaning to be placed upon the law of Missouri. Any other would metamorphose the supposed "reform" into a gigantic trap, where the inoffensive citizen might readily be deprived of his most valuable right as a freeman by political manœvers in the form of "errors," the force of which he could not foresee until too late to avoid their consequences.

A single case appears to antagonize the conclusion we have reached on this point, namely, Price v. Lush (1890), 10 Mont. 61. With all respect due to the court that decided it, we think it embodies a misapplication of the English precedents which it cites. It entirely omits to mention or consider the effect of section 19 of the Montana statute (Gen. Laws Mont. 1889, p. 140), substantially the same as our section 4778, which should be given significance to prevent such unjust consequences to voters as have been explained, and which are impossible under the English Ballot Act, which that case purports to follow and expound.

Some other decisions however are supposed to cast light on the present discussion, and will therefore be touched upon. In Talcott v. Philbrick (1890), 59 Conn. 472, the Supreme Court of Connecticut had to deal with a statute so unlike the Australian law that it does not even provide for printing the list of candidates at public expense; but it requires the secretary of State to furnish at cost (to all persons applying for them) blank slips of paper of uniform size, color, etc., indorsed (in print) "Official Ballot," and upon these papers the respective political parties may cause the names of their own nominees to be printed, under provisions declaring that, "in addition to the official indorsement, the ballots shall contain only the names of the candidates, the office voted for and the name of the political party issuing the same" (Pub. Laws Conn. 1889, p. 155, § 1), and further, that "all ballots cast in violation of the foregoing provisions, or which do not conform to the foregoing requirements, shall be void and no counted." § 2. The case showed that some ballots, in a local election, had been issued by the Republican party, but were headed "Citizens';' yet so loth was the court to disfranchise a few persons, who had voted for an alderman in Hartford, that the ruling pronouncing the "Citizens'" ballots illegal was made by three judges only, the other two dissenting. The exact value of such a decision in enlightening the case at bar we need not pause to measure. The general reader can probably as well determine that for himself.

In People v. Board of Canvassers (1891), 129 N. Y. 395, the statute required a certain uniform official indorsement on all ballots, cast at any one polling place, to preclude identification of any particular vote or class of votes, and declared that "no ballot that has not the printed official indorsement shall be counted." The facts were that a certain group of ballots, having an indorsement different from others properly used at the precinct in question, were voted by one thousand two hundred and fifty two electors, and the court rejected the ballots mentioned, but only by the concurrence of four judges, three others dissenting. We mention these cases neither to approve nor disapprove them, but to indicate how inapplicable they are to the case in hand, and to show that, even with language as positive as that they construe, how reluctant are the courts to adopt an interpretation the effect of which is to deprive a large number of their fellow citizens of the electoral franchise. Having regard to the spirit and purpose of the Missouri statute, and to the

general principles governing the treatment of popular elections by the courts in this country, we think it should be held that, where a candidate for public office causes no timely objection to be made before the election (as permitted by section 4778), he should be regarded as having waived all objections that may exist to the presence on the official ballot of any names of nominees not properly entitled to be there. Compare Reg. v. Bradburn (1876), 6 Ont. Pr. Rep. 314.

2. It is next charged that the "Union Labor" list of names of candidates was not legally certified to the county clerk. How it was certified is not stated. That it was not certified at all is not alleged. From what appears it is evident that the pleader is giving merely his views of the certificate, of which neither the language, substance nor legal import is mentioned, so that the court cannot judge whether it was legally "certified" or not. In addition therefore to the reasons already assigned for declining to review, in this proceeding, the alleged errors of the county clerk in preparing and printing the ballot, the application of a familiar rule of code pleading makes it unnecessary to discuss as a fact such a legal conclusion as alludes to the certification of the "Union Labor" ticket.

3. It is next asserted that the votes from Sedalia should be excluded, because they were received at two polling places instead of at one. It appears that the county court had designated Sedalia city as one election district, but had further provided two voting places therein for holding this election, with one set of judges at each, as hereafter more particularly described. This was done by orders to that effect before the election. Both of the voting precincts were at the court-house in that city. At one the voters whose surnames began with the letters "A" to "K" voted; at the other those with the letters "L" to "Z". Each poll was reached by way of a window, and the two were only seventy-five feet apart. The windows fronted on one portico of the court building. Through them passways led to the polling booths in the rooms within, where the election judges were stationed and received the ballots. Assuming that these arrangements involve the irregularity of receiving the vote at two places instead of at one, does it nullify the will of the people so expressed, the election having been regular in other respects? Undoubedtly some irregularities are of so grave a nature as to invalidate the whole return of the precinct at which they occur, as for example the omission of registration—Zeiler v. Chapman (1874), 54 Mo. 502—or of statutory notice McPike v. Penn (1872), 51 Mo. 63. In determining which are of that kind, the courts aim merely to give effect to the intent of the law-makers in that regard, aided by established rules of interpretation. If the law itself declares a specified irregularity to be be fatal, the courts will follow that command, irrespective of their views of the importance of the requirement. Ledbetter v. Hall, (1876), 62 Mo. 422. In the absence of such declaration, the judiciary endeavor, as best they may, to discern whether the deviation from the prescribed forms of law had or had not so vital an influence on the proceedings as probably prevented a free and full expression of the popular will. If it had, the irregularity is held to vitiate the entire return; otherwise it is considered immaterial. It has been sometimes said, in this connection, that certain provisions of election laws are mandatory and others directory. These terms may perhaps be convenient to distinguish one class of irregularities from the other. But, strictly speaking, all provisions of such laws are mandatory, in the sense that they impose the duty of obedience on those who come within their purview. But it does not therefore follow that every slight departure therefrom should taint the whole proceedings with a fatal blemish. Courts justly consider the chief purpose of such laws, namely the obtaining of a fair election and an honest return, as paramount in importance to the minor requirements which prescribe the formal steps to reach that end, and in order not to defeat the main design, are frequently led to ignore such innocent irregularities of election officers as are free of fraud, and have not interfered with a full and fair expression of the voters' choice. Thus in Davis v. State (1889), 75 Tex. 420, the law required that each ward in a town should "constitute an election precinct," yet in San Marcos, a town incorporated with four wards, the county commissioners established two precincts only (without reference to ward lines), and each concluded parts of the adjacent country; but the court, after full discussion of the general subject, held that the election of those precincts was not avoided by the irregularity. In Stemper v. Higgins (1888), 38 Minn. 222, a general election was conducted in the village of Madelia, by its officers, as though it constituted a district separate from the township in which it was situated, where also a precinct was opened; whereas, the law declared that "every organized township and every ward of an incorporated city is an election district." yet the court held the returns from the village valid, despite the irregularity indicated. These cases find support in others, illustrating the same principle. Gass v. State (1870), 34 Ind. 425; Dale v. Irwin (1875), 78 Ill. 180; Wheelock's Case (1876), 82 Penn. St. 297; Preston v. Culbertson (1881), 58 Cal. 209; Farrington v. Turner (1884), 53 Mich. 27, and Peard v. State (1892) (Neb.), 51 N. W. Rep. 828, a case under ballot reform statute. Such rulings are not peculiar to election proceedings, but result logically from the application of them of a time-tested rule of interpretation, which requires that the general design and object of a law be kept in view and effectuated, even if it be necessary, in so doing, to restrict somewhat the force of subsidiary provisions that otherwise would conflict with the paramount intent. Cortis v. Waterworks (1827), 7 Barn. & C. 330. Elections under the

"Australian Ballot" statutes fall within the reach of the principle above quoted, touching the treatment of innocent irregularities, committed by the officers taking the poll. In the English law of 1872 it is enacted that "no election shall be declared invalid by reason of a non-compliance with the rules contained in the first schedule to this act, or any mistake in the use of the forms in the second schedule to this act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this act, and that such non-compliance or mistake did not affect the result of the election." Ballot Act 1872 (35 & 36 Vict.), chap. 33, § 13, p. 200. (The rules and schedule prescribe the forms of nomination papers and procedure for conducting the election.) It has been judicially determined in that country that the language just quoted is merely declaratory of the common law of England. Woodward v. Sarsons (1875), L. R., 10 C. P. 751. It certainly goes no further, as a curative power, than the accepted general principles of the law of elections in this country, as expounded by the courts. We consider that they have a just and proper application to the facts now in judgment. It is not asserted, on this appeal, that the supposed irregularity of having two voting booths instead of one had any bearing upon the result of the election to the prejudice of the plaintiff, and we are unable to conjecture how it could, in any wise, have redounded to his disadvantage. We believe it furnishes no sufficient reason for excluding the vote af the two precincts in the circumstances.

5. We conclude that a reasonable and natural construction of the law forbids as to repudiate, for any such reasons as have been presented, the three thousand votes cast in Sedalia in 1890. If for every error of a county clerk, or harmless irregularity in election procedure, citizens, having no control over either, are to lose their right of choosing public officers, the "Reform Ballot Act," instead of being found an improvement of the machinery of popular government, will justly be denounced as a "snare to entrap the unsuspecting voter." Gumm v. Hubbard (1888), 97 Mo. 319. Such a result however was never contemplated in its enactment, and should not be brought about by a narrow and technical reading of it. "Where any particular construction which is given to an act, leads to gross injustice or absurdity, it may generally be said that there is fault in the construction, and that such an end was never intended or suspected by the framers of the act." Peckham, J., in People v. Board of Canvassers (1891), 129 N. Y. 395. While it is well enough to insist on a proper and strict performance of duty by officers conducting elections, we are not of the number of those who imagine that such performance will be promoted by disfranchising the whole body of electors in any locality where errors such as are here charged occur. The legislature has not plainly declared such a purpose, and we think it should never be imported into a statute by construction.

It seems to us, after full reconsideration of the case, that the decision of Judge Field on the circuit, in favor of the defendant, was right and should be affirmed. Black, Brace and Macfarlane, JJ., concur.

NOTE.—The questions presented in the principal case are of live interest, in view of the adoption by so many of the States of what is known as the Australian Ballot System. Although the main question presented in the principal case, viz., as to the effect of the act of the official, whose duty it was to prepare the official ballot, in inserting therein the names of candidates not legally entitled to be inserted, is a new one so far as the exact question is concerned, yet it is in a measure the old question revived as to whether the statute providing the duties of election officers is merely directory and not mandatory.

It is contended that if the statute is to be construed so that ballots cannot be counted which contain the names of candidates prohibited by the statutes, then it is unconstitutional. And the argument thereon is based upon the wrong that would be done the voter to deprive him of his franchise on account of the illegal act of a public officer.

The dissenting opinion of Gantt, J., concurred in by Sherwood, C. J., reveals the difficulty that is met with in the determination of the question involved. It is contended by the dissenting judges that in the administration of election laws, individual instances doubtless will occur when the voter loses his ballot, but that this is no greater hardship than befalls the individual in the administration of other general laws.

An exhaustive review of the authorities leads them to the conclusion that the statute is mandatory and not directory, and the failure to comply with its provisions renders elections void. From the very lengthy opinion we cull the following cases, cited in behalf of their conclusion: State v. Cook, 41 Mo. 594, where the whole vote of an election district was thrown out by the court of appeals because the officer making the registration was disqualified to act. West v. Ross, 53 Mo. 350, where it was contended that the statute requiring ballots to be numbered was merely directory. In that case the court says: "If we deny the consequence affixed by the legislature to the non-performance of a regulation provided by the law, it in effect nullifies the law itself. Although it may deprive a portion of the citizens of the county of their right to be heard in the election, it is better that they should suffer temporary deprivation than that the courts should habituate themselves to disregard or ignore the plain law of the land in order to provide for hard cases." See, also, Ledbetter v. Hall, 62 Mo. 422; State v. Frazier, 98 Mo. 426, where there was a failure to comply with the law as to registration. It was held that when the law prescribes certain requisites in the ballot, and follows it with the denunciation that unless the ballot complies with the law "it shall not be counted," then the statute is mandatory, and a non-compliance thereof will avoid the election. Price v. Lush, 24 Pac. Rep. 749, where the Supreme Court of Montana held that as this was an English statute and had been often construed by the courts of that country, the Territory of Montana must be presumed, in adopting it, to take it with the construction it had received in England, and consequently held an election void where the successful candidate at the polls had not been nominated as required by law, but had succeeded in getting his

name on the official ballot. That court reached that conclusion after a thorough examination of the English and Australian cases, following among other cases, Pennock v. Dialogue, 2 Pet. 1; McDonald v. Hovey, 110 U. S. 628; Allen v. Bank, 120 U. S. 34; Pratt v. Telephone Co., 141 Mass. 225. See, also, the very recent decision of People v. Board of Canvassers, 29 N. E. Rep. 327, in which the Court of Appeals of New York elaborately review the Australian Ballot System adopted in that State, and hold that as the act provided that no ballots not properly indorsed shall be received, or if received shall be counted, it is imperatively the duty of the canvassing officers to reject them. Says Chief Justice Ruger: "But it is urged that a strict construction of the law must result in disfranchisement. This is true, but the law plainly contemplates such a result, and who can complain except those who are opposed to any restrictions whatsoever upon the action of the election?" In that case the ballot was indorsed "official ballot," but by the wilful or negligent act of the court the wrong precinct was indorsed and they were rejected. See also Talcott v. Philbrick, 59 Conn. 472, which was a decision under the Australian Ballot System of that State, where ballots were held void because of the addition of the word "citizens" to the official ballot. See also Fields v. Osborne, 21 Atl. Rep. 1070, which was also a construction of the Connecticut ballot law wherein ballots were held void by reason of the violation of the requirements of the statute.

The dissenting opinion in the principal case certainly makes a plausible argument in behalf of the view of the minority of the court.

BOOK REVIEWS.

POMEROY'S EQUITY JURISPRUDENCE.

The exceptional popularity which this treatise has had since its first appearance in 1881 best attests its great merit. It is known and recognized, certainly among the practitioners in this country, as the standard authority upon the subject of equity jurisprudence. Though perhaps not more learned or more satisfactory in the enunciation of the principles of equity than the older work of Judge Story, it may be said to be better adapted to the needs of the modern practitioner, and undoubtedly pursues its subject into avenues and by-paths not trodden by the older expounders of the science of equity. As is probably known to most of our readers, Prof. Pomeroy died soon after the publication of the first edition, charging upon his sons as a testamentary request the work of preparing a second edition. It will strike those who have occasion to examine the edition that the trust has been faithfully performed, and that the great reputation of the author has not in any respect been dimmed or diminished by his worthy descendants. The editors state that in the preparation of this edition, "A careful examination has been made of all the cases, English and American, which have appeared since the publication of the first edition, involving matters falling within the scope of this work. These cases are upwards of eight thousand in number. In gathering this large mass of material, the editors have not, in any instance, made use of the often fallible assistance of the digests, but have gone directly to the reports. A considerable proportion of the material thus gathered has, of course, been discarded, as involving merely the enunciation of familiar doctrines; but the nearly universal desire among members of the legal profession to be guided by the latest authority has generally been respected. While it has not been found necessary or desirable to add to or alter the text, except for the purpose of correcting a few typographical errors, the editors have not confined their labors to the mere enumeration of recent decisions. Without attempting to enlarge the general scope of the work, whose contents are so well known, it has been found possible to give a treatment considerably more in detail of many important topics."

We have made careful examination of the book, and do not hesitate to commend, in the strongest terms, the excellent work of the present editors. Manifest throughout is the evidence that their labors have been carefully and conscientiously performed. Though the general plan of the work, as it came from the pen of Prof. Pomeroy, remains unaltered, there has been added, particularly in the notes, much new matter. The later and more modern authorities are handled in a manner that indicates study and not merely culling from digests. It would extend this review far beyond its possible limits, were we to enter into a detailed statement of what is contained in the work. Besides, it is too well known to the profession to need such treatment at our hands. It is sufficient to say that the treatise is in three large volumes, and contains the entire subject of equity jurisprudence, its history and origin, its nature, the extent of its jurisdiction, its maxims and principles, its distinctive doctrines and subjects. It is beautifully printed and bound and well indexed. Published by Bancroft-Whitney Company, San Francisco.

BEACH ON CONTRIBUTORY NEGLIGENCE.

The first edition of this work, in 1885, was the author's first venture in legal authorship. Since that time he has made himself well known to the profession by writing a number of good law books and by his connection, as editor, with the *Railway and Corporation Law Journal*. The author states that in the preparation of this second edition he has rewritten the text in many places, has reconstructed and increased the number of the chapters and sections, and has included, as nearly as possible, all the valuable cases reported since the publication of the first edition. We are impressed with the character of the work done by the author, and feel warranted in giving it a hearty indorsement. As will readily be understood, it does not pretend to cover the entire subject of negligence, and for that reason in no way supplants or takes the place of other standard treatises upon that topic, but it rather supplements them. In a detailed manner it treats distinctively of the subject of contributory negligence, or counter-negligence, or, as the author speaks of it, negligence as a defense. We may, perhaps, be permitted to remark that Mr. Beach must be an indefatigable and industrious worker in order to prepare so many books, and so many good books in so short a period of time.

This volume is well indexed, and is published by a firm whose name is a guarantee that it is prepared in a first-class manner, viz.: Baker, Voorhis & Co., New York.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

ALABAMA, 1, 6, 8, 10, 12, 13, 15, 20, 21, 24, 25, 29, 30, 31, 36, 38 43, 50, 56, 57, 58, 62, 63, 65, 66, 70, 71, 76, 81, 85, 86, 88, 89, 92, 98, 104, 117

1. ACCOUNTING — Equity — Corporations. — A bill in equity against a corporation for an accounting, and to recover money alleged to have been obtained through fraud, unaccompanied by a prayer for discovery, is demurrable, where it is not alleged that the accounts to be examined are mutual, but merely that there is a complication in the accounts between defendant and a corporation with which it was consolidated, without particularly averring the respects in which such accounts are complicated.—BEGGS v. EDISON ELECTRIC LIGHT & ILLUMINATING CO., Ala., 11 South. Rep. 381.

2. ADMIRALTY—Charter Party.—Under a charter party by which a steamer was let for the fruit trade the owners stipulated to maintain the steamer's machinery in a thoroughly efficient condition for the service, accidents excepted: Held, upon the proof, that the breaking of the junk ring of the high-pressure cylinder was an accident not attributable to defects in the machinery, or want of efficiency, and that the owners of the steamer were not liable for damage to a cargo of fruit caused by delay in the voyage resulting from the accident.—THE CURLEW, U. S. D. C. (Md.), 51 Fed. Rep. 246.

3. ANIMALS—Killing Dogs — Constitutional Law.—A dog is "property," within the meaning of Const. U. S. amend. 5, which provides that no person shall be deprived of property without due process of law.—JENKINS v. BALLANTYNE, Utah, 30 Pac. Rep. 760.

4. APPEAL—Habeas Corpus.—A district judge, in vacation, allowed a writ or *habeas corpus* for the person of a deputy marshal in custody under State process, and, after hearing, entered an order finding that the petitioner was in custody for an act done in pursuance of a law of the United States, that he had a right to have the prosecution against him moved to the federal circuit court, and therefore held him to bail for his appearance before that court: Held, that this was a final order, from which an appeal would lie to the United States Supreme Court.—CARICO v. WILMORE, U. S. D. C. (Va.), 51 Fed. Rep. 209.

5. APPEAL—Record.—Under 2 Hill's Code, § 1423, providing that the trial judge shall certify that the statement of facts contains "all the material facts in the cause or proceeding," a certificate that the statement contains all the evidence, and all the instructions asked by defendant, and given by the court, is insufficient.—SCHLAECHTER v. MILLER, Wash., 30 Pac. Rep. 745.

6. APPEAL—Setting Aside Default.—Act Feb. 16, 1891, providing for an appeal from decisions granting or refusing "new trials," does not authorize an appeal from an order setting aside a default; the remedy in such case being by *mandamus* or other writ.—TRUSS v. BIRMINGHAM, L. G. & M. R. Co., Ala., 11 South. Rep. 454.

7. APPEAL BOND—Execution by Attorney.—An appeal bond executed in his client's name, but without his authority, and duly filed, by an attorney at law, is voidable, and not void, and is validated, and rendered effectual from the date of filing, by the client's ratification thereof under seal, made and filed after the time for an appeal has elapsed, but before objection made.—BOWEN v. JOHNSON, R. I., 24 Atl. Rep. 830.

8. ASSIGNMENT FOR BENEFIT OF CREDITORS—Preference.—An insolvent may prefer a creditor by making an absolute sale or transfer of property to him in discharge of his debt, and the validity of such preference is not affected by the fact that the insolvent made a general assignment of the balance of his property for the benefit of his other creditors.—ELLISON v. MOSES, Ala., 11 South. Rep. 347.

9. ATTACHMENT—Filing.—Mansf. Dig. Ark. § 4967, provides that civil action is commenced by filing in the office of the clerk a complaint, and causing a summons to be issued thereon. Section 5308 declares that no summons or order for a provisional remedy shall be issued by the clerk in any action before the complaint or petition "is filed in his office:" Held, that this does not require that the complaint shall be actually lodged within the walls of the office before the issuance of the writ, and where the clerk, outside of his office and at the office of an attorney, receives and stamps "Filed" a complaint, affidavit, and bond for an attachment, and thereupon signs and attests the writ with his official seal, delivers the same to the marshal, and then immediately takes the papers to his office, the attachment is valid; especially as section 5083 declares that the court must, at every stage of the proceedings, disregard any error or defect which does not affect the substantial right of the parties.—PEOPLE'S SAV. BANK & TRUST CO. v. BATCHELDER EGG CASE CO., U. S. C. C. of App., 51 Fed. Rep. 130.

10. CHATTEL MORTGAGE—Conversion.—A junior mortgagee of chattels, who consents to their sale by the mortgagor and thereby induces a purchaser to buy, is liable to the senior mortgagee as for a conversion.—HENDERSON v. FOY, Ala., 11 South. Rep. 441.

11. CHECK—Acceptance by Telegram.—One T, having purchased certain cattle, offered his check for $22,000 in payment. The teller refused to accept it or part with the cattle until assured that the check would be paid, and therefore telegraphed the drawee, asking if it would pay T's check for $22,000. The drawee answered: "T is good. Send on your paper:" Held, that this constituted a contract to pay the check on presentation.—NORTH ATCHISON BANK v. GARRETSON, U. S. C. C. of App., 51 Fed. Rep. 168.

12. CONCEALED WEAPONS.—The well grounded apprehension of an officer that a criminal, known to be armed, will resist arrest to the extent of taking life, does not bring him on a prosecution for carrying a "concealed" weapon, within the provision of Code, § 3775, that apprehension of "an attack" may be shown in justification and mitigation of punishment.—REACH v. STATE, Ala., 11 South. Rep. 415.

13. CONSTITUTIONAL LAW — Discovery —Code, 1886, § 3545, providing that a creditor without a lien or judgment may maintain a bill in chancery for the discovery of the assets of the debtor, is not a violation of Const. art. 1, § 12, providing that "the right of trial by jury shall remain inviolate"—SOUTHERN RY. & CONST. CO. v. MCKENZIE, Ala., 11 South. Rep. 367.

14. CONSTITUTIONAL LAW — Oleomargarine—Original Packages.—Code Md. art. 27, § 90, providing that no person shall have oleomargarine in his possession with the intent to sell the same, or shall offer the same for sale, is, as to original packages, an interference with interstate commerce, and therefore unconstitutional.—IN RE MCALLISTER, U. S. C. C. (Md.), 51 Fed. Rep. 282.

15. CONSTITUTIONAL LAW—Statutes.—Act Dec. 9, 1890 (Acts 1890-91, p. 59), entitled "An act to prevent stock from running at large in Pike county," which not only makes it unlawful for stock to run at large but makes the owner liable for all damages done by the animals while at large, and provides that the judgment recovered for such damages be a lien on the stock doing the damage, does not violate Const. art. 4, § 2, requiring that "each law shall contain but one subject, which shall be clearly

expressed in the title."—BARNHILL v. TEAGUE, Ala., 11 South. Rep 444.

16. CONTRACT—Guaranty.—In an action to recover on a contract for services it appeared that plaintiff wrote to defendant making inquiry regarding the financial standing of a person unknown to plaintiff, who wished to employ him, to which defendant replied, "You may rest assured that you will get your pay for all work done:" Held, that this did not constitute a contract on which defendant was liable as guarantor.—SWITZER v. BAKER, Cal., 30 Pac. Rep. 761.

17. CONTRACTS—Performance.—Where a mortgage is given to secure notes made payable whenever plaintiff shall perfect a certain title to the satisfaction of attorneys named in the notes, the mortgage cannot be foreclosed if the attorneys named, in good faith and from no improper motive, withhold their approval of the title, though the title may be good, in the opinion of the court.—CHURCH v. SHANKLIN, Cal., 30 Pac. Rep. 789.

18. CONTRACT—Reformation—Injunction.—In a suit to restrain defendant from removing a telephone from plaintiff's banking house, where it appears that there was a written contract by which plaintiff promised to pay for the service at a certain rate, but plaintiff claimed that after a specified time it was to pay only "regular rates," which were much less, and there is evidence tending to show that the preliminary negotiations were on the basis of "regular rates" after a certain date, the decree of the lower court reforming the contract on the ground of mutual mistake, and granting an injunction will be affirmed.—MARTINSBURG DEPOSIT BANK v. CENTRAL PENNSYLVANIA TELEPHONE & SUPPLY CO., Penn., 24 Atl. Rep. 754.

19. CONTRACTS—Restraint of Trade—Trust Combinations.—Act Cong. July 2, 1890, which forbids combinations in restraint of interstate commerce, and gives a right of action to any person injured by acts in violation of its provisions, does not authorize suit where the only cause of action is the bringing of two suits which have not been decided.—BISHOP v. AMERICAN PRESERVERS' CO., U. S. C. C. (Ill.), 51 Fed. Rep. 272.

20. CORPORATIONS—Directors—Discovery.—A bill was filed by stockholders of a corporation asking an accounting for profits and a discovery as to matters which would appear from the corporation books and papers. The bill did not charge that the books and papers failed to fully and truly show such matters that plaintiffs were denied access to them, nor that the legal remedy by *mandamus* was inadequate to enforce the right of the stockholders to examine them: Held, that, so far as the bill depended on the demand for discovery, it was without equity.—WOLF v. UNDERWOOD, Ala., 11 South. Rep. 344.

21. CORPORATIONS — Fraudulent Conveyances. — A transfer by a manager and officer of an insolvent corporation, without authority of the board of directors, of all its property in consideration of a debt of the corporation for which he is liable as indorser, joint maker, or guarantor of a note given therefor, is void as to creditors, being in effect a preference of himself; and the property should be treated as if held in trust for the creditors.—GOODYEAR RUBBER CO. v. GEORGE D. SCOTT CO., Ala., 11 South. Rep. 370.

22. CORPORATION—Fraudulent Conveyance.—Where a creditor of a corporation seeks to subject to his claim property fraudulently conveyed, by it to an officer, and by him to a third person, who is made defendant, neither the corporation grantor nor the officer is a necessary party defendant.—BLANC v. PAYMASTER MINING CO., Cal., 30 Pac. Rep. 765.

23. CORPORATIONS — Insolvency.— An insolvent business corporation, to secure certain notes held by two of its creditors, made a mortgage of all its property to a trustee, which provided that the corporation should remain in possession and do business as before, and should apply the net proceeds of sales it might make in the course of business to the payment of these notes, and that no renewal or extension of them should be construed as a payment: Held, that the mortgage was a mere device for continuing the corporate life for an indefinite time after insolvency, and that it constituted a hindrance and delay to creditors, which would not be allowed.— TOMPSON v. HURON LUMBER CO., Wash., 30 Pac. Rep. 741.

24. CORPORATIONS— Insolvency—Preference.— An insolvent corporation cannot prefer the debts of a member of its governing board. —COREY v. WADSWORTH, Ala., 11 South. Rep. 350.

25. CORPORATIONS — Insolvency — Preference. — One who has taken the property of an insolvent firm in payment of an indebtedness, and who afterwards transfers the property to a corporation of which he is a member, in exchange for stock, has no valid claim against the assets of the corporation upon its becoming insolvent, until after payment of all other debts. —GIBSON v. TROWBRIDGE FURNITURE CO., Ala., 11 South. Rep. 365.

26. CRIMINAL LAW—Assault with Intent to Kill.—In a prosecution for assault with intent to kill, it appeared that defendant, the keeper of a gambling hall, shot at a hole in the roof, which he knew had been made by a policeman for, the purpose of watching the premises, and at which he suppossd the policeman then was. The ball went through the roof at that point, but the policeman was then on the roof at another point, and so escape injury: Held, that this constituted an assault, under Pen. Code, § 240, defining an assault as "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another," and a conviction of assault with intent to kill was warranted.—PEOPLE v. LEE KONG, Cal., 30 Pac. Rep. 800.

27. CRIMINAL LAW—Blackmail.— In a prosecution under Pen. Code, § 523, providing for the punishment of one who, for the purpose of extortion, sends a letter "expressing or implying, or adapted to imply, any threat such as is specified in section 519," an instruction that defendant is guilty if the letter on which the charge is based was adapted to imply "any threat," is erroneous, as only threats such as are specified in section 519 are to be considered. — PEOPLE v. CHOYNSKI, Cal., 30 Pac. Rep. 791.

28. CRIMINAL LAW— Information.— A defendant in a criminal case is not entitled to discharge on the ground that the information was not filed against him within 30 days after he was held to answer, where the depositions and commitment upon which the information is based have not been returned by the committing magistrate.—PEOPLE v. AH SING, Cal., 30 Pac. Rep. 797.

29. CRIMINAL LAW—Shooting—Public Road.—A "turnout road," which is used in consequence of a temporary obstruction of a public road, and has not been made a public road, as required by statute, nor acquired by the public by prescription or dedication, is not a "public road," within Crim. Code, § 4095, providing for the punishment of one "who discharges a gun or any other kind of firearms along or across a public road."—MCDADE v. STATE, Ala., 11 South. Rep. 375.

30. CRIMINAL LAW —Testimony.—Where defendant in a criminal case fails to object to a question calling for irrelevant testimony, is not a matter of right to have the answer excluded.— BILLINGSLEY v. STATE, Ala., 11 South. Rep. 409.

31. CRIMINAL PRACTICE—Perjury.— An indictment for perjury committed in a civil action is sufficient which substantially follows Crim. Code, form No. 67, p. 275, and section 3908, alleging the proceeding in which the oath was taken, the name of the officer before whom it was made, his authority to administer it, its falsity, and the materiality of the matter falsely sworn to.— WALKER v. STATE, Ala., 11 South. Rep. 401.

32. CRIMINAL PRACTICE— Robbery. — An information which charges that defendant did "steal, take, and carry away from the person of" the prosecuting witness his personal property, by force and against his will, is sufficient, in the absence of a demurrer thereto, to sup-

port a conviction for "robbery," which is defined by Pen. Code, § 211, to be the "felonious taking of personal property in the possession of another from his person or immediate presence." — PEOPLE v. AH SING, Cal., 30 Pac. Rep. 796.

33. DEATH BY WRONGFUL ACT.—Code 1881, § 9, provides that a father may maintain an action as plaintiff for the injury of a child, and section 8 provides that, when the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing his death: Held, that as the recovery under section 9 in case of death is for the loss of the child's services prior to his majority, while under section 8 it is for the loss of the child's estate accruing after he would have attained his majority, the former section was not repealed by the subsequent enactment of the latter, and a judgment by a child's administrator for his death is not a bar to an action by the father for the same cause.— HEDRICK v. ILWACO RY. & NAV. CO., Wash., 30 Pac. Rep. 714.

34. DEATH BY WRONGFUL ACT—Limitation.—In an action for wrongful death occurring in another State, the statute of limitations of the forum governs, unless the statute giving the right of action in such other State itself prescribes a limitation.—MUNOS v. SOUTHERN PAC. CO., U. S. C. C. of App., 51 Fed. Rep. 118.

35. DEDICATION— Sale by Plat.—Where the owner of land plats it into lots and sells one of them by reference to the plat, which has been recorded, the sale constitutes a dedication of all the streets marked on the plat, and at the suit of the purchaser a court of equity will enjoin the vendor from obstructing any of them.—THAXTER v. TURNER, R. I., 24 Atl. Rep. 829.

36. DEED — Alteration. — A deed does not bind the grantor when the name of the grantee is altered without his assent.—HOLLIS v. HARRIS, Ala., 11 South. Rep. 377.

37. DEED—Cancellation.—Where, in an action to cancel a deed, the complaint states that the deed was made without consideration, and procured by undue influence, but further shows that there was sufficient consideration, which had failed, and states no facts in regard to the exercise of undue influence, it is sufficient to support a decree for plaintiff, when advantage of its defects is not taken by special demurrer.—DE PEDRORENA v. HOTCHKISS, Cal., 30 Pac. Rep. 787.

38. DEED—Construction —A voluntary deed by a husband of substantially all his property to his wife, having children by himself and a former husband, to hold to her "and the heirs of her body by myself as husband," especially excluding rights of inheritance of her heirs by any other person, does not create an estate tail, the children of his body being purchasers.—SULLIVAN v. MCLAUGHLIN, Ala., 11 South. Rep. 447.

39. DEED—Delivery.— A deed cannot be delivered directly to the grantee himself, or to his agent or attorney, to be held as an escrow.— HUBBARD v. GREELEY, Me., 24 Atl. Rep. 799.

40. DOWER— Assignment.—A bill for the assignment of dower is demurrable when it does not state that complainant's husband, or another to his use, was seized of an estate of inheritance, at some time during the marriage, in the land in which dower is claimed, and merely alleges that he "had the use and enjoyment of the same, and occupied the same as his homestead."—KENYON v. KENYON, R. I., 24 Atl. Rep. 788.

41. EMINENT DOMAIN — Condemnation. — Where the trustees of a school district build a school house on vacant land, not knowing who is the owner of the land, but supposing that he will permit the use of it for such purpose, and intending, in case of his refusal, to acquire it by purchase or condemnation, on condemnation of the land for school purposes the owner is not entitled to compensation for such improvement made by the trustees.—CHASE v. SCHOOL DIST. NO. 10 IN BOX ELDER COUNTY, Utah, 30 Pac. Rep. 754.

42. EMINENT DOMAIN—Proceedings—Burden of Proof. —In condemning land for corporate purposes, under Laws 1889-90, p. 294, which provide for ascertaining by a proceeding instituted by the corporation, first the necessity of the taking, and then before a jury the amount of damages, the burden of establishing the value of the land, payment of which is by Const. art. 1, § 16, made a condition of the taking, is on the corporation, and therefore it has the right to open and close.— SEATTLE & M. RY. CO. v. MURPHINE, Wash., 30 Pac. Rep. 720.

43 EQUITY—Accounting.—A bill for discovery, an accounting, and to set aside a sale of property by plaintiff to defendant, showed that plaintiff, an aged widow, employed defendant, an attorney at law, to take charge of her deceased husband's estate by representing her as administratrix and distributee; that while such relation existed defendant purchased property of the estate on credit at an inadequate price and without security; that defendant retained funds to an unreasonable amount under a claim of compensation for services; that by defendant's advice plaintiff's rights as distributee, as surety for the guardian of a minor, and as creditor of the minor became intermingled: Held, that a demurrer on the ground that plaintiff had a remedy at law was properly overruled. — LITTLE v. KNOX, Ala., 11 South. Rep. 443.

44 EVIDENCE. —Under 2 Comp. Laws 1888, § 2617, providing that when any instrument is acknowledged, certified, and recorded, and it shall be shown to the court that it is lost, or not within the control of the party wishing to use the same, the record or a certified copy may be read in evidence, a certified copy of a deed offered in evidence by the grantee therein is not admissible when it appears that he has left the original with a person in the city where the trial is had, and no effort has been made to produce the same.—WILSON v. WRIGHT, Utah, 30 Pac. Rep. 754.

45. EVIDENCE — Contradicting Deeds.— Under Civil Code, § 1625, providing that the execution of a contract in writing, supercedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument, and Code Civil Proc. § 1856, providing that, when the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and that the term "agreement" includes deeds as well as contracts between parties, evidence of oral agreements made during negotiations leading up to the execution and delivery of deeds in exchange of land, and contradictory of such deeds, is incompetent.—BEALL v. FISHER, Cal., 30 Pac. Rep. 773.

46. EXECUTORS AND ADMINISTRATORS. — Pub. St. ch. 189, § 8, and chapter 205, § 9, which provide that no "action" shall be brought against an executor or administrator in his official capacity within one year after the will shall be proved or administration granted, except for certain specified causes, applies only to actions at law, and not to suits in equity.—STONE v. CORCORAN, R. I., 24 Atl. Rep. 781.

47. FEDERAL COURTS— Equity Practice — State Statutes.—A State allowing a married woman to sue in her own name does not govern the federal courts in equity suits and where the fact appears on the face of the bill the same is demurrable.—WILLS v. PAULY, U. S. C. C. (Cal.), 51 Fed. Rep. 257.

48. FEDERAL COURTS — Jurisdiction — United States Marshals.—On petition for a writ of *habeas corpus* to release a United States marshal from custody under State process the court cannot inquire into the truth of justice of the charges against him, but is limited to the question whether his alleged unlawful acts were done in pursuance of a law of the United States.—IN RE MARSH, U. S. D. C. (Cal.), 51 Fed. Rep. 277.

49. FEDERAL COURTS — Monopolies.— An indictment under the act of July 2, 1890, relating to monopolies, averred that defendants, in pursuance of a combination to restrain trade in distillery products between the States and monopolize the traffic therein, acquired by lease or purchase, prior to the passage of the act,

some 70 distilleries, producing three-quarters of the distillery products of the United States, and that they continued to operate the same after the passage of the law, and by certain described means sold the product at increased prices: Held, that no crime was charged in respect to the purchase or continued operation of the distilleries, since there was no averment that defendants obligated the vendors of the distilleries not to build others, or to withhold their capital or experience from the business.—IN RE CORNING, U. S. D. C. (Ohio), 51 Fed. Rep. 205.

50. FORCIBLE ENTRY AND DETAINER— Amendment of Complaint.—On appeal by plaintiff from a judgment of a justice in an action for forcible entry and detainer, he is not entitled to amend his complaint "by adding other lands thereto."—LEATHERWOOD V. SUGGS, Ala., 11 South. Rep. 416.

51. FRAUDULENT CONVEYANCES.—Where an insolvent debtor pays an antecedent debt by conveyance of property to the creditor, if the debt was honestly due and not materially less than the value of the property conveyed, and no interest or benefit is reserved to the debtor, the conveyance is lawful, and is not affected by the existence of a fraudulent intent on the part of one or both of the parties thereto.—POLLOCK V. MEYER, Ala., 11 South. Rep. 385.

52. FRAUDULENT CONVEYANCES—Evidence.—To prove that an alleged sale of goods was without consideration and in fraud of creditors, evidence that the grantee, previous to making the sale, stated that he was indebted to various persons, and that he wanted the witness to direct him to some good attorney to fix up a transfer of stock to some friend, and put his property beyond the reach of his creditors, though there is no evidence that such statement was brought to the knowledge of the grantee, is admissible as showing the grantor's fraudulent intent.—O'HARE V. DUCKWORTH, Wash., 30 Pac. Rep. 724.

53. HABEAS CORPUS—Federal Court.— The settlement of a statement of facts at the request of a defendant in a criminal prosecution, and the hearing of an appeal brought by him, are not proceedings "against" him, within the meaning of Rev. St. U. S. § 766, which provides that pending *habeas corpus* proceedings in the federal courts, or appeals thereupon, any proceeding against the person imprisoned, in any State court, for any matter so heard and determined under such writ of *habeas corpus*, shall be deemed null and void.—STATE V. HUMASON, Wash., 30 Pac. Rep. 718.

54. HIGHWAYS.— The incorporated boroughs of this State are invested with all requisite power and authority to lay out and open streets and highways within their respective limits.—IN RE PISCATAWAY AND BRIDGEWATER TOWNSHIPS, N. J., 24 Atl. Rep. 759.

55. HIGHWAYS—Town Council.—Under Pub. St. ch. 64, conferring the power to lay out and make highways exclusively upon town councils, and defining their powers and duties, the town council for these purposes are public officials, and not the agents and servants of the town, and a suit will not lie against the town to restrain it from exercising this power, and for an account as to damages for the unauthorized acts of its town council.— SMART V. TOWN OF JOHNSTON, R. I., 24 Atl. Rep. 830.

56. IMMIGRATION—Habeas Corpus —The power of the federal superintendent of immigration to return passengers is confined to "alien immigrants," and the question whether persons ordered to be returned are of that description is jurisdictional, and may be determined by the courts on *habeas corpus* —IN RE PANZARA, U. S. D. C. (N. Y.), 51 Fed. Rep. 275.

57. INJUNCTION — Action at Law. — Where the complaint, filed to have a deed absolute in form declared a mortgage, and to enjoin, pending the decision, an action at law for possession of the premises, does not show that plaintiff cannot, without the injunction, obtain full redress for any wrong he may suffer from the action, or that the injunction is necessary for his protection in the event of his success in the suit, it is proper to dissolve the preliminary injunction on the presentation of a sworn answer denying the allegations of the complaint.— WEEMS V. ROBERTS, Ala., 11 South. Rep. 434.

58. INJUNCTION—Time of Granting.—The fact that an injunction is granted before the filing of the bill is at most only an irregularity, which cannot operate as a reversal, and which is waived by a motion to dissolve on answer.—EX PARTE SAYRE, Ala., 11 South. Rep. 378.

59. INSURANCE— Conditions of Policy.— Though a fire policy, permitting alterations in the building not exceeding 10 days, provide that any extention of the privilege must be previously consented to in writing by the secretary, or otherwise be void, still, if the local agent communicates to the officers of the company the fact of more extended alterations being made, and it makes no objection, the fact of the condition being violated cannot be set up in discharge of the policy on the occasion of a subsequent loss.—STAUFFER V. MANHEIM MUT. FIRE INS. CO., Pa., 24 Atl. Rep. 754.

60. INSURANCE— Conditions of Policy.—Under an insurance policy providing that the entire policy shall be void if the interest of the insured be not truly stated therein, where one insures property in his own name without informing the company that it belonged to his wife, she cannot recover for a loss, there being no case for reformation for fraud, accident, or mistake.—DIFFENBAUGH V. UNION FIRE INS. CO. OF SAN FRANCISCO, Pa., 24 Atl. Rep. 745.

61. INSURANCE— Negligence.— Where the agent of a fire insurance company promises to indorse on a policy left with him for the purpose the company's consent to the removal of the property insured, which indorsement he has authority to make, and he neglects to do so before the property is destroyed by fire, in an action on the policy the company is estopped to set up the want of such indorsement on the policy caused by the negligence of its own agent.—HENSCHEL V. OREGON FIRE & MARINE INS. CO., Wash., 30 Pac. Rep. 735.

62. INTOXICATING LIQUORS—Sale.— Where defendant sold pasteboard checks, and then accepted such checks in exchange for beer, such acts constituted a sale of the beer.— BILLINGSLEY V. STATE, Ala., 11 South. Rep. 408.

63. INTOXICATING LIQUORS — Original Packages. — Where a non-resident delivered bottles of liquor to a carrier, each separately wrapped and labeled, and the carrier, without the knowledge of consignor, put such bottles into boxes, and thus transported them into Alabama, the bottles, and not the boxes, are "original packages."—TINKER V. STATE, Ala., 11 South. Rep. 383.

64. JUDGMENT—Collateral Attack.—A judgment creditor, whose lien was subsequent to that of a judgment taken on a certain mortgage, who failed to allege collusion between the mortgagor and mortgagee in adding to the judgment a certain sum as attorney's fees, but merely alleged that the account so added was excessive, has no standing to dispute the validity of the judgment by petition in the nature of a notice to the sheriff, stating the rise of a controversy as to the appropriation of the funds arising from a sale thereunder.—ZUG V. SEARIGHT, Pa., 24 Atl. Rep. 747.

65. JURISDICTION — State and Federal Courts.— The mere fact that a suit to foreclose a mortgage given by a corporation in trust to secure bonds issued without consideration to its stockholders has been commenced in a federal court, and a foreclosure and sale decreed, but not yet executed, does not prevent a State court of competent jurisdiction entertaining a suit by simple contract creditors of the corporation, who were neither parties nor privies to the foreclosure suit, for relief from the fraud of the corporation and stockholders, though in granting relief the State court must not disturb the possession of the property in the hands of the federal court, or conflict with its decree. — GAY V. BRIERFIELD COAL & IRON CO., Ala., 11 South. Rep. 353.

66. JUSTICE'S COURT—Jurisdiction.—Under Code, 1886, § 3405, providing that on appeal from a justice of the

peace the case shall be tried *de novo* without regard to any defects in the summons or other process, or proceedings before the justice, an appeal is not an adequate remedy where the contention is that the justice's court obtained no jurisdiction of defendant's person under the process served, and therefore *certiorari* will lie.—MEMPHIS & C. R. CO. v. BRANNUM, Ala., 11 South. Rep. 468.

67. LANDLORD AND TENANT — Possession.—A tenant, after the expiration of his term, becomes a trespasser, though his holding is in good faith under a color and reasonable claim of right; and the landlord without legal process may forcibly enter, therefore, and eject him.—ALLEN v. KEILY, R. I., 24 Atl. Rep. 776.

68. LIFE INSURANCE.—The right of the legal representatives of an assured person to recover the proceeds of a speculative life policy from a person who has received the money ceases when an executor or administrator has received and in good faith distributed it.—BLAKE v. METZGAR, Penn., 24 Atl. Rep. 755.

69. MANDAMUS—Officer.—Where a city, without legislative authority, established a sinking fund, and appointed respondent commissioner thereof, he is so far engaged in a public service in the nature of an office that *mandamus* will lie to compel him to pay over such fund on the application of persons authorized to receive the same.—NYE v. ROSE, R. I., 24 Atl. Rep. 777.

70. MARRIED WOMAN'S ACT.—Under Code 1886, § 2350, providing that a wife may, on filing in the probate judge's office the consent of her husband, pursue any trade or business as if unmarried, a married woman so carrying on business in the name of a company may make a valid transfer of all the property of the company by a bill of sale, through her husband as her agent.—LATHROP-HATTEN LUMBER CO. v. BESSEMER SAV. BANK, Ala., 11 South. Rep. 419.

71. MASTER AND SERVANT—Negligence.—In an action against a corporation for the death of an employee, an instruction to find for plaintiff, if the injuries were sustained by deceased through "any defect in the ways, · · · machinery, or plant of defendant, while performing the duties imposed · · · by his employment, which defects were known to defendant, or its officers or agents in charge, · · · or which it or they should have known by the exercise of ordinary care," is erroneous, as failing to instruct that defendant must have a reasonable time in which to remedy the defect after its discovery, before it can be held guilty of negligence in failng so to do.—UNITED STATES ROLLING STOCK CO. v. WEIR, Ala., 11 South. Rep. 436.

72. MASTER AND SERVANT—Negligence—Fellow-Servant.—The foreman of an extra gang of track repairers, whose sole duty it was to supervise the work of track repairing over some 18 or 20 miles of the roadbed of a railroad company, to hire the men necessary to do at work, and to direct the operations of the force so employed, is a vice principal, for whose negligence the railroad company is liable, where a workman in said gang was injured while under his orders.—NORTHERN PAC. R. CO. v. PETERSON, U. S. C. C. of App., 51 Fed. Rep. 182.

73. MECHANIC'S LIEN.— Where several houses are erected by the same contractor for the same owner, and the materials used in the construction are so used indiscriminately, a notice of mechanic's lien for materials furnished is not defective because it does not specify for which particular house the materials were furnished. — WHEELER v. RALPH, Wash., 30 Pac. Rep. 709.

74. MECHANIC'S LIEN—Extent of Land.—Where, in an action to foreclose a mechanic's lien, there was no allegation or finding as to whether or not the land described in the decree was greater in extent than was necessary for the convenient use and occupation of the building, it will be presumed on appeal that it was not, unless it otherwise appears in the record.—SACHSE v. AUBURN, Cal., 30 Pac. Rep. 800.

75. MECHANIC'S LIEN — Irrigating Ditch. —To entitle plaintiffs to judgment in an action to enforce a mechanic's lien against an irrigating ditch, for the construction thereof, they must show ownership or an interest in defendants in the land over which the ditch was constructed, and the mere fact that defendants own the ditch and have possession of the land is not sufficient.—NELSON v. CLERF, Wash., 30 Pac. Rep. 716.

76. MORTGAGE—Injunction.—Where a bill to cancel a mortgage made by complainant's intestate avers full payment of the mortgage, and offering to do equity by payment of what may be found due on the mortgage, and by submission to such decree as the court may render, the averments will authorize relief as against the mortgage.— HARTLEY v. MATTHEWS, Ala., 11 South. Rep. 452.

77. MORTGAGES— Acknowledgment—Breach of Covenant of Warranty.— Under Gen. St. § 1435, which provides that a certificate of acknowledgment shall recite that the deed, mortgage, or instrument was acknowledged by the person whose name is signed as grantor, a certificate need not state that the signing was "voluntary," though the form suggested in section 1437 contains such an allegation.— KLEY v. GEIGER, Wash., 30 Pac. Rep. 727.

78. MORTGAGE SALE— Estoppel.—Where a sale made under a power in a mortgage is invalid, the mortgagor or his successors in title, if they have received the surplus proceeds of the sale, cannot recover the property, unless they repay the same, or tender it to the purchaser, since by its receipt and retention they ratify the sale, and they cannot be excused from such payment or tender by the fact that they have spent the money and are too poor to replace it.—BREWER v. NASH, R. I., 24 Atl. Rep. 832.

79. MUNICIPAL CORPORATIONS— Defective Sewer.— A city is liable for injuries caused by an obstruction in a sewer which was placed there under the supervision of the city engineer, or of which he had actual or constructive notice.— KIESEL & CO. v. OGDEN CITY, Utah, 30 Pac. Rep. 757.

80. MUNICIPAL CORPORATIONS — Negotiable Bonds.— Where a town, in pursuance of statutory authority, subscribes for railway bonds, but, without such authority, issues negotiable bonds in payment therefor, such bonds are absolutely void, and no suit can be maintained on them on the theory that they are valid as non-negotiable instruments. — DODGE v. CITY OF MEMPHIS, U. S. C. C. (Mo.), 51 Fed. Rep. 165.

81. NEGLIGENCE— Evidence. — Plaintiff's intestate, a brakeman on defendant's railroad, was killed by falling from a box car, in the top of which, near the brake, was a hole, according to some witnesses four feet long, and according to others four feet square. Deceased was last seen alive standing at the brake, near this hole: Held, that there was evidence for the jury to consider that the death of deceased was owing to the hole in the top of the car.—BROMLY v. BIRMINGHAM M. R. Co., Ala., 11 South. Rep. 341.

82. NEGLIGENCE — Passenger in Private Vehicle. — Where a person accepts the gratuitous invitation of the owner and driver of a vehicle to ride with him, and exercises no control over such driver, the latter's negligence cannot be imputed to his guest, so as to defeat his recovery against a third person for injuries resulting from the concurring negligence of the driver and such third person.— UNION PAC. RY. CO. v. LAPSLEY, U. S. C. C. of App., 51 Fed. Rep. 174.

83. NEGOTIABLE INSTRUMENTS— Indorsement on Sunday.—The indorsement of a promissory note is an act within the statute prohibiting secular business on the Sabbath.— FIRST NAT. BANK OF BAR HARBOR v. KINGSLEY, Me., 24 Atl. Rep. 795.

84. NEGOTIABLE INSTRUMENT — Intoxication as Defense.— A negotiable note, signed by the maker while in a state of intoxication, cannot be avoided when in the hands of a *bona fide* purchaser before maturity. — SMITH v. WILLIAMSON, Utah, 30 Pac. Rep. 753.

85. PARTNERSHIP—Evidence.—In an action to recover

from a partner a debt of the firm, the written agreement under which he and his fellow were doing business having been shown, the testimony of his fellow as to whether they were partners was inadmissible, being an expression of opinion as to the effect of the contract, whose construction was for the court.—ALEXANDER V. HANDLEY, Ala., 11 South. Rep. 390.

86. PAYMENT—Application.—In an action to recover a debt, the question being whether defendants had consented to the application of the proceeds of goods given to secure the same to other debts, an instruction that there could be no recovery if defendants wrote a letter directing the proceeds to be credited on the debt secured, regardless of whether they had previously or subsequently consented to their application to an unsecured debt, was erroneous, where there was evidence other than such letter that defendants had acquiesced in the application of the proceeds to other debts.—BOYD V. JONES, Ala., 11 South. Rep. 405.

87. PLEADING — Amendment of Complaint.—When a complaint is defective in an amendable particular, like failure to allege a demand before action, and the defendant answers on the merits, and at the trial objects to plaintiff's evidence on account of such defect in the complaint, such objection ought not to prevail against plaintiff's offer to prove facts which would excuse such demand; it not appearing that defendant would be prejudiced thereby on account of surprise. Such evidence should be received, and the complaint amended to correspond with the facts proved.—JENKINSON V. CITY OF VERMILLION, S. Dak., 52 N. W. Rep. 1066.

88. PLEADING — Demurrer.—Under Code 1886, § 2690, providing that demurrers shall be allowed only to matter of substance which the party demurring specifies, and that "no objection can be taken or allowed which is not distinctly stated in the demurrer," a demurrer stating "that all of the matters and things set forth in said plea shows no reason why plaintiff should not recover," is too general.—EVITT V. LOWERY BANKING CO., Ala., 11 South. Rep. 442.

89. PLEADING—Demurrer—Bond.—Where a complaint in a suit on a replevy bond did not assign special breaches, a demurrer which presented objections that applied to a part of the complaint or count only was properly overruled, as not being the proper remedy.—HESTER V. BALLARD, Ala., 11 South. Rep. 427.

90. PUBLIC LANDS—Grant.—Const. art. 17, § 2, by which "the State of Washington disclaims all title in and claim to all tide, swamp, and overflowed lands patented by the United States," was substantially a grant of the State's interest in such lands, and such interest passed to the grantee in a patent from the United States previously issued, which covered lands lying between ordinary high and low tide.—SCURRY V. JONES, Wash., 30 Pac. Rep. 726.

91. PUBLIC LAND—Town-site Law.—Under 14 U. S. St. at Large, p. 541, providing that public land occupied as a town-site, in case the town is incorporated, may be entered by the corporate authorities in trust for the occupants thereof according to their respective interests, an occupant before such entry has an inchoate right to the benefit of the law, which descends to his widow and children, but which they lose by failing to retain possession till the entry is made.—WEST V. CHILD, Utah, 30 Pac. Rep. 755.

92. RAILROAD COMPANIES — Accidents.—Running a train at a high rate of speed, at a point where the trainmen have reason to think it likely that persons are on the track, as in a city or populous district, or failure to keep a lookout at such a point, is negligence which will render the railroad company liable for resulting injuries, though the injured person was guilty of contributory negligence, and the trainmen were without fault after they discovered his danger.—NAVE V. ALABAMA, G. S. R. CO., Ala., 11 South. Rep. 391.

93. RAILROAD COMPANIES—Collision.—In an action for personal injuries resulting from a collision of trains at a crossing of two railroads, it cannot be said as a matter of law that the failure of plaintiff's train to stop absolutely at the stopping post contributed to the injury, when it appears that at most it moved slowly past the post, and that the engineer looked to the stopping post on the other road, and no train was then in site.—KANSAS CITY, FT. S. & M. R. CO. V. MCDONALD, U. S. C. C. of App., 51 Fed. Rep. 178.

94. RAILROAD COMPANIES — Municipal Aid.—Though an action by the authorities of a county against a railroad company for the conversion of negotiable bonds of the county issued in aid of the railroad is not maintainable under a special act set up in the declaration as authority for the action, authorizing the county to institute a suit against such company for the enforcement of the rights of the county, in relation to its subscription to the company's stock, the action may be maintained, under Code 1880, § 897, which entitles each county "to the benefit of all actions to which individuals are entitled in a given state of case," and a demurrer to the declaration should be overruled.—BOARD OF SUP'RS. OF CARROLL COUNTY V. GEORGIA PAC. RY. CO., Miss., 11 South. Rep. 471.

95. RAILROAD COMPANIES—Negligence.—As there is no penalty provided for the violation of Gen. St. Conn. § 3554, requiring every person in charge of a locomotive to sound the bell and whistle at highway crossings, and making the railroad company in whose employ such person is liable for damages accruing to any person in consequence of any omission to comply with the provisions of the section, and providing further, that "no railroad company shall knowingly employ any engineer who has been twice convicted of violating the provisions of this section," such statute is remedial, and not penal, in its nature, and an action for injuries sustained by reason of a non-compliance therewith may be brought in another State.—GARDNER V. NEW YORK & N. E. R. CO., R. I., 24 Atl. Rep. 881.

96. RAILROAD COMPANIES — Negligence.—Whether a traveler upon the highway, who sees the first section of the severed train pass over the crossing, is negligent in attempting to cross the track without looking or listening for the rear section of the train, is a question for the jury.—YORK V. MAINE CENT. R. CO., Me., 24 Atl. Rep. 790.

97. RAILROAD COMPANIES — Negligence.—Where one approaching a railroad crossing sees or hears an approaching train, and attempts to cross before it reaches him, he is negligent, as a matter of law.—MYERS V. BALTIMORE & O. R. CO., Penn., 24 Atl. Rep. 747.

98. RAILROAD COMPANIES — Negligence.—Under Code 1886, § 1144, providing that a railroad engineer must, "on perceiving any obstruction on the track, use all the means within his power known to skillful engineers, such as applying brakes and reversing engine, in order to stop the train," the duty to take precautions against inflicting injuries to live stock on the track arises, not only when the engineer sees an animal on the track, but also when, by the exercise of due diligence, he could have seen it, and a failure in either of these respects is negligence for which the railroad company is liable.—LOUISVILLE & N. R. CO. V. POSEY, Ala., 11 South. Rep. 423.

99. RATIFICATION OF NEW CONSTITUTION.—Where the legislature convokes a convention for the purpose of framing a new constitution, without requiring that, when adopted, it shall be ratified by popular vote, it is not necessary to the validity of the constitution that it be so ratified.—SPROULE V. FREDERICKS, Miss., 11 South. Rep. 472.

100. RES ADJUDICATA.—In an action by a judgment creditor of an insolvent to compel the latter's assignee to account, a finding and judgment that plaintiff, by his acts and dealings with defendant, is estopped from claiming any rights under the assignment, is *res adjudicata* as to all the property assigned.—ROBB V. VAN HORN, Penn., 24 Atl. Rep. 756.

101. STOCK AND STOCKHOLDERS — Subscription—Inducement.—Honest expressions of opinion as to the happening of future events affecting the business of a

corporation, made by a stockholder and officer of the company, as an inducement to others to give a note for stock in the corporation, do not render the note voidable on the failure of the events to happen, when the happening of the events is not made a condition of payment.—JEFFERSON V. HEWITT, Cal., 30 Pac. Rep. 772.

102. STOCKHOLDERS—Corporate Debts.—In an action to compel payment of a corporate debt out of the unpaid subscription of a single stockholder, such stockholder cannot, after trial and judgment, object that the corporation was not made a party defendant.—POTTER V. DEAR, Cal., 30 Pac. Rep. 777.

103. TAXATION—Evidence.—Plaintiff spent the greater part of his time in Nevada, attending to mortgage investments made by him there. He claimed to be a resident of California, but had little property and no business there, and all his securities were in Nevada. He escaped taxation on his personal property in California by stating that it was all situated in Nevada: Held, that plaintiff would not be allowed entirely to escape taxation on his personal property, and that, as his only business was conducted in Nevada, the investments, in making which his business consisted, were properly taxable in that State.—BOWMAN V. BOYD, Nev., 30 Pac. Rep. 823.

104. TAXATION — Promissory Notes. — Negotiable promissory notes, secured by mortgage on land situated in a county other than that of the owner's residence, and held by an agent for collection and re-investment, are taxable to the owner at his residence, rather than at the *situs* of the property.—BOYD V. CITY OF SELMA, Ala., 11 South. Rep. 393.

105. TRESPASS—Recaption of Property.—Where a person is in peaceable possession of a horse under a claim of right, another, though the lawful owner, is not justified in breaking his close and taking the animal without his permission.—SALISBURY V. GREEN, R. I., 24 Atl. Rep. 787.

106. TROVER AND CONVERSION — Title.—Title to personal property is not changed by its conversion, and by the bringing of an action of trover therefor by the owner.—JONES V. COBB, Me., 24 Atl. Rep. 798.

107. VENDOR AND VENDEE—Abandonment.—Where a purchaser of real estate defaults before the execution of a deed, and the vendor abandons the contract of sale by reason of such default, the purchaser may recover back the part of the purchase money paid on the land; and this, though it was stipulated that it should be forfeited if the contract should not be performed.—PHELPS V. BROWN, Cal., 30 Pac. Rep. 774.

108. WATERS—Appropriation.—Civil Code, § 1410, provides that the right to the use of "running water flowing in a river or stream, or down a canon or ravine," may be acquired by appropriation: Held, that percolating water which seeped into a spring from a swamp, or wet land surrounding the same, was not subject to appropriation.—SOUTHERN PAC. R. CO. V. DUFOUR, Cal., 30 Pac. Rep. 783.

109. WATERS—Diversion—Estoppel.—In an action for the diversion of water by the building and maintenance of a dam by defendants, where it appears that plaintiff assisted in maintaining the dam and diverting the water, he cannot recover. Such participation in the diversion of the water need not be specially pleaded, but may be proved under an issue raised by defendants' denial that plaintiff was injured by the diversion of the water.—CHURCHILL V. BAUMANN, Cal., 30 Pac. Rep. 770.

110. WATERS — Surface Water — Nuisance.—A city is not liable in an action to abate a nuisance and for damages arising from the prevention of the flow of surface water from its own lot by raising the grade of a street in accordance with lawful authority.—COXCORAN V. CITY OF BENICIA, Cal., 30 Pac. Rep. 798.

111. WATER RIGHTS—Conveyance.—Where defendant conveyed its canal and water right pending an action to enjoin it from diverting the waters of a stream into and through the canal, it will be presumed, in the absence of a showing to the contrary, that subsequent proceedings in the case are had in defendant's name on behalf of the grantee, and defendant's appeal from a decree against him will not be dismissed.—HEILBRON V. LAND & WATER CO., Cal., 30 Pac. Rep. 802.

112. WATER RIGHTS—Waste.—Under Civil Code, § 1411, providing that an appropriation of running water, to give a right to its use, must be for some useful or beneficial purpose, and that when the appropriator ceases to use it for such a purpose the right ceases, where it is adjudged that plaintiffs are entitled to a certain amount of water from a stream, and that defendants are entitled to the balance, and it appears that plaintiffs have always used the water by means of a defective flume, the court may direct them to carry the water to which they are entitled by flume and pipe, so that the balance may not be wasted.—BARROWS V. FOX, Cal., 30 Pac. Rep. 768.

113. WILLS.—The testatrix bequeathed her property to legatees named in the will in full ownership. She directed that it be placed in possession of a trustee during her existence. The charge is not a prohibited substitution, as the trustee is not in any respect vested with the property as owner.—BENSON V. COZINE, La., 11 South. Rep. 459.

114. WILL—Ambiguous Clause—Construction.—A will provided that "whenever the youngest child of any daughter in being at my decease shall have reached the age of twenty-one years, then my said trustees are to divide, distribute, and convey said property:" Held, as it appears from the facts existing at the date of the will, and from unambiguous provisions thereof, that if the words "in being" are construed to refer to "daughter," so as to postpone the distribution until the majority of the youngest possible grandchild on the daughter's side, a division of the trust fund might be postponed to a remoter date than was the evident intent of the testator, or entirely defeat the daughter's part of the trust, such words should be held to refer to "child."—ROBINSON V. GREENE, R. I., 24 Atl. Rep. 826.

115. WILL — Construction.—Testator bequeathed the residue of his estate in trust, to be used in support of M for life, and, "if there should be anything remaining at the decease of M," then I give and bequeath such residue and remainder to D, her heirs and assigns, forever, provided the amount does not exceed $3,000:" Held, that the legacy of $3,000 vested in D on death of testator, payment being postponed until the death of M.—CHAFEE V. MAKER, R. I., 24 Atl. Rep. 773.

116. WILLS—Estates in Trust.—A testator gave to his brother all the residue of his estate in trust for the children of the brother, to be divided among them share and share alike. He nominated the brother also "as executor," with full power to sell any of the estate, and to compound debts, and to invest and re-invest the proceeds of the residue at his discretion "as trustee" for the children: Held, that the brother was not charged with any duty as trustee rendering it necessary that he should retain the legal title; and hence, under the statute of uses, the title passed directly to the children.—REEVES V. BRAYTON, S. Car., 15 S. E. Rep. 658.

117. WITNESS—Refreshing Memory.—A witness may refresh his memory by reference to a copy of a memorandum made by him, only when it is first shown that the copy is correct.—MAYOR, ETC., OF CITY OF BIRMINGHAM V. MCPOLAND, Ala., 11 South. Rep. 427.

118. WITNESS—Transactions with Decedents.—Under Pub. St. ch. 214, § 33, providing that when an original party to a contract or cause of action is dead, or when an executor is a party to the suit, the "other party" cannot testify on his own offer, the words "the other party" in the former case mean the other original party to the contract or cause of action; and hence, in a suit between the executrix of one of the original parties to a contract and the heir at law of the other original party thereto, the former is a competent witness on her own behalf.—KENYON V. PEIRCE, R. I., 24 Atl. Rep. 825.